

CWP No.3598 of 1994

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

CWP No.3598 of 1994

L.K. Gupta

....Petitioner

Versus

Chief Settlement Commissioner and Custodian General and Anr.

....Respondents

CWP No.11541 of 1994

Kesar Chand

....Petitioner

Versus

State of Haryana and Ors.

....Respondents

Date of Order: 19.11.2015

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Som Nath Saini, Advocate for the petitioner.
(in CWP No.3598 of 1994)

Mr. Jaideep Verma, Advocate for the petitioner.
(in CWP No.11541 of 1994)

Mr. Rajesh K. Sheoran, Addl.A.G, Haryana.

Mr. Shiv Kumar, Advocate.

RAKESH KUMAR JAIN, J (ORAL)

This order shall dispose of two petitions bearing CWP No.3598 of 1994 and CWP No.11541 of 1994 since common questions of law and facts are involved in them. However, facts are being extracted from CWP No.3598 of 1994.

In short, land measuring 128 sq. yards adjacent to H.No.1-C/44 Nissan Hut NIT Faridabad was transferred to L.K. Gupta son of R.D Gupta, vide offer letter No.95/FD/ISF dated

21.1.1986 by the Tehsildar (Sales-cum-M.O. Faridabad (for short "the Tehsildar")) for residential purposes. It was made clear in condition No.6 of the offer letter that in case of change of land use at any time of the area, additional cost of the land @ ₹250/- per sq. yards with 15% compound interest shall be charged from the date of approval. The offer made to the petitioner was subject to the approval by the competent Authority as per condition No.9 of the offer letter. The petitioner has allegedly paid the cost of the land as per residential use and after realisation of the full amount, the conveyance deed was issued to the petitioner by the Tehsildar on 16.5.1988. While submitting the case to the Chief Settlement Commissioner for approval, it came to the notice of the Tehsildar that the offeree has changed the land use from residential to commercial. Accordingly, the Tehsildar submitted the case for approval at commercial rates, which was accorded by the Chief Settlement Commissioner on 19.4.1991 and thereafter notice was issued for payment of the amount along with interest on 04.11.1993, which was duly received by the wife of the petitioner on 11.11.1993. Since no payment was made, the Tehsildar issued another notice on 02.12.1993. Consequently since the petitioner was not coming forward despite repeated notices given to him, the matter was referred to the Chief Settlement Commissioner, who after examining the entire matter, vide order dated 11.2.1994 found that the petitioner has been using the property in question for commercial purposes without payment of amount for land use,

as a result thereof and cancelled the offer dated 21.1.1986 and the conveyance deed dated 16.5.1988 and the amount already deposited by the petitioner was forfeited. The Tehsildar was directed to take possession of this area within 30 days from the receipt of the order. The said order dated 11.2.1994 passed by the Chief Settlement Commissioner was challenged by the petitioner by way of this writ petition, which was admitted on 11.1.1995 and stay of dispossession granted on 22.3.1994 was allowed to continue.

It is not disputed that both the writ petitions were allowed by learned Single Bench on 14.8.2013 in which it was ordered that the petitioner shall make the payment of the demanded amount with 9% simple interest, which shall be calculated from the date of demand till the date of payment. However, said order dated 14.8.2013 passed by the learned Single Judge was set aside in LPA No.835 of 2014 and the matter was remanded back to this Court for decision afresh.

On 02.07.2015, this court passed the following order:

“Since one of the disputes is also regarding the charging of compounding interest on the basis that the part of the allotted premises are being used for a commercial purpose, it is deemed expedient to direct the Deputy Commissioner, Faridabad to get a survey conducted and submit a report detailing the total area allotted and the area of the portion being put to commercial use, if any.

List on 19.11.2015 for consideration.

Photocopies of this order be placed on the files of

connected cases.”

Pursuant to the aforesaid order, Sh. Amit Kumar Agrawal, the Deputy Commissioner, Faridabad has submitted a Status/Survey report dated 05.11.2015 in which it is averred that the property involved in writ Petition No.3598 of 1994 bearing 1-C/44 measuring 128 sq. yards is residential and property in CWP No.11541 of 1994 bearing 5-H/46 is also residential.

It is submitted by learned counsel for the petitioner that since the property in question has been found to be residential in the latest survey conducted by the Deputy Commissioner in terms of order dated 02.07.2015, there is no question of property having been used by the petitioner for commercial purposes. Thus, it is submitted that once the property has not been put to commercial use, the respondents could not have asked for commercial rates and could have cancelled the allotment and conveyance deed much less after the payment already deposited. It is submitted that the petitioner may not use the said property, which is found to be residential, for commercial purposes.

In this regard, learned counsel for the petitioner has made a statement that the property in question in both writ petitions shall not be used for commercial other than residential purposes.

In view of the aforesaid facts and circumstances, I am of the considered opinion that the impugned order passed by the Chief Settlement Commissioner is patently erroneous as he

has committed error on facts while holding the property in question being used for commercial purposes though it is being used for residential purposes as per latest survey conducted by the Deputy Commissioner.

Accordingly, present writ petitions are allowed and the impugned order passed by the Chief Settlement Commissioner dated 11.2.1994 is set aside. It is made clear to the petitioners in both the writ petitions that the property in question involved in these petitions shall not be used for any other but for residential purposes. In case, it is found that the property is used for commercial purposes, it shall be resumed after notice.

November 19, 2015
manoj

(RAKESH KUMAR JAIN)
JUDGE