

CWP No. 15290 of 2014

Date of decision: 8.12.2015

Suresh

.....Petitioner

versus

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. John Kumar, Advocate
for the petitioner.

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

Mr. Jatinder Nagpal, Advocate
for respondent No. 4.

Rakesh Kumar Jain, J.(Oral)

The petitioner has prayed for a writ in the nature of mandamus, seeking a direction to the respondents to decide and finalize his case in the light of Policy No. CIP/A-I/0-4/50176-94 dated 17.12.2004 (Annexure P-1) in respect of sale of land underneath his house.

In short, the petitioner is in occupation of land of the Municipal Committee, Palwal for the past 30 years over which he has already constructed a Pucca house and is residing therein with his family.

On 17.12.2004, respondents No. 1 and 2 framed a policy to sell land of

the municipality which is in unauthorised occupation, at a particular rate. The petitioner moved an application on 27.01.2005 followed by another application dated 29.04.2005 for seeking permission of sale of land of the Municipal Committee, Palwal at the rate prescribed but the said application was not decided. Therefore, the petitioner filed a petition bearing CWP No. 3406 of 2006 in which the same prayer was made with regard to consideration of sale of land underneath his house, in terms of the aforesaid policy. The said writ petition was disposed of on 3.03.2006 in the following manner:-

“After hearing the learned counsel for the parties, we dispose of writ petition with a direction to the respondents to take a decision on the applications, Annexure P-2 and P-3, in the light of policy, Annexure P-1, within a period of four months from the date of that a certified copy of this order is supplied to them. In case of the petitioner's claim is to be denied, reasons therefore, should be given in the order itself and communicated to him.”

According to the petitioner, Municipal Committee, Palwal passed a Resolution on 2.05.2008 and decided to sell the land to the petitioner underneath his house which was followed by another Resolution passed on 15.03.2011. Thereafter, Municipal Committee, Palwal sent his case for approval to Deputy Commissioner, Palwal on 29.05.2013 but that decision was not implemented. Therefore, the present writ petition has been filed.

After notice of motion was issued, respondents have put in

appearance. Municipal Committee has filed the reply in favour of the petitioner but the State has contested the claim of the petitioner on the ground that the petitioner is in unauthorised possession of the municipal land and the said land cannot be sold to him after the enforcement of the Haryana Management of Municipal Properties and State Properties Rules, 2007 (for short 'Rules') which were notified on 2.11.2007.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that the said Rules shall not apply in the case of the petitioner because this Court had issued a direction on 3.03.2006 to the respondents, arrayed therein, to take decision in the light of the policy which was favouring the petitioner at that time. Had the decision been taken within the prescribed period i.e. four months which had expired on 4/7/2006, the petitioner might have got an order in his favour because the policy was favourable. But since the decision, taken by the Municipal Committee thrice was not implemented and in the mean time, the Rules have become enforceable, therefore, it cannot be used against the interest of the petitioner whose case has to be looked into by the Municipal Committee and the Urban Development Department of the Government of Haryana in terms of the said policy. It would have been an altogether different situation had the case set up by the petitioner for the sale of the land on the basis of policy after coming into force of the Rules but since he has set up his case for the sale of land underneath his house in the light of the policy on the basis of which numerous other persons have already taken advantage, the petitioner

cannot be deprived.

Therefore, in view of the aforesaid discussion, present petition is hereby allowed and the respondents are directed to consider the case of the petitioner in the light of the policy dated 17.12.2004 within a period of three months from the date of passing of this order.

[RAKESH KUMAR JAIN]

JUDGE

8th December, 2015

Shivani Kaushik