

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-29.04. 2015

CWP No.5006 of 2015

Kuldeep Kumar Kant & Anr.

.....Petitioners.

Versus

State of Haryana & Ors.

.....Respondents.

AND

CWP No.5026 of 2015

Kuldeep Kumar Kant & Anr.

.....Petitioners.

Versus

State of Haryana & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Arun Jain, Senior Advocate assisted by
Mr. Kushagra Mahajan, Advocate for the Petitioners.

JASWANT SINGH, J.(ORAL)

Vide this common order this Court shall dispose of aforesaid two writ petitions as common questions of law are involved therein. The facts are also same except that in CWP No.5026 of 2015 originally the land was offered under a Policy for transfer to Ravinder Kumar and Smt. Devi and CWP No.5006 of 2015 under the same policy a land was offered to

Sadanand and Sukhdev. The present petitioners in both the writ petitions are the subsequent purchasers from the aforesaid people who had claimed to be the owners of the property on the basis of policy by the State Government issued on 28.02.1984.

The grievance of these persons (unauthorised occupants) in the present writ petition is that vide order dated 26.7.2013 (P-10) learned Additional Chief Secretary-cum-Financial Commissioner, Haryana exercising powers under Section 9 of the Haryana Evacuee Properties Act, 2008, has disposed of the petition by observing as follows:-

“ I have considered the matter in the light of the above facts and the averments of the parties. The facts of the case detailed in para no.2 above go to show that the offerees had been given sufficient time and opportunity to deposit the balance amount but they failed to do so and ultimately the forfeiture/resumption orders had been passed in the year 1994. Undoubtedly there is delay of 19 years in challenging the said orders which shows that the offerees had every knowledge of the forfeiture/resumption orders. I have also gone through Rule 10(11) of the Rules of 2011 and agree with the contention of the ADA that after the forfeiture/resumption orders, the Tehsildar (Sales) is not empowered to recover the amount but still there is provisions in the said rules for getting the land transferred on the basis of possession if they fulfill the conditions laid in the said rules. The Hon'ble High Court of Punjab and Haryana in Civil Writ Petitions 1031/1991, 15626 of 1991

and 1604 of 1994 decided on 18.7.2013 has directed that the cases of such nature may be considered under the provisions of Haryana Evacuee Properties(Management and Disposal) Act, 2008 and 2011 Rules framed thereunder. Therefore, the case of the present petitioners may be considered under the aforesaid provisions of law and therefore, petitioners are directed to appear before the Tehsildar (Sales) Faridabad on 30.08.2013 who will consider the claim of the petitioners under the aforesaid Act, 2008 and the Rules 2011 framed thereunder. These petitions are disposed of accordingly.”

The argument of the petitioner is that learned Financial Commissioner should have considered their claim under the Haryana Evacuee Properties (Management & Disposal) Act, 2008 as a pending claim of unauthorised occupant. It is not in dispute in the present case that the property was offered to the predecessors in interest of the petitioners by the State Government under a policy framed on 28.2.1984 whereby the predecessors who were unauthorised occupants were offered the disputed property at a rate of Rs.250/- per square yard which was to be deposited within a specified period. However, due to certain disputes regarding the payment of the amount, the predecessors in interest of the petitioners did not deposit the amount within the time frame specified and the Tehsildar (Sales) Faridabad vide its order dated 14.7.1994 (P-6) proceeded to resume the property and forfeit the amount already deposited by the predecessors in interest. The said order was never challenged before any Court. It was only in the year 2012 that the present petitioners, who had bought the possessory

rights of this property in the year 2012 agitated the matter for the first time before the Authorities concerned by moving certain representations, however, the learned Financial Commissioner, Haryana vide its orders dated 26.7.2013 (**P-10**) has disposed of the matter by relegating the petitioners to Tehsildar (Sales) Faridabad under the Haryana Evacuee Properties (Management and Disposal) Act, 2008 and 2011 Rules framed thereunder. It is pertinent to mention here that the petitioners have not disclosed as to what happened after the passing of the said order because nearly two years have subsequently passed after the said order was passed, wherein the Financial Commissioner, Haryana had directed the petitioners to appear before the Tehsildar (Sales) Faridabad on 30.08.2013.

Learned Counsel for the petitioner has vehemently relied upon a Division Bench judgment of this Court passed in CWP No.4546 of 1995 decided on 23.01.2014 (**P-12**) whereby, this Court had directed the respondents to consider the claim of the petitioners therein under the 2008 Act as a pending claim and permitted allotment under the Policy of 1984 but at the revised rate.

After hearing learned Counsel for the petitioners and perusing the entire file as well as the facts stated herein above this Court is of the considered view that the present petitions are devoid of any merit and same deserves to be dismissed.

It is apparent that the learned Financial Commissioner, had passed the order in the year 2013 and the present petition is being filed in 2015. There is a considerable delay on part of the petitioners in approaching this Court and due to the delay as well as laches on their part the petition deserves to be dismissed. However, even on merits, if the case

is seen, the learned Financial Commissioner has relegated the petitioners to approach the Tehsildar (Sales), Faridabad for allotment as per the new statute since the issue of conditional allotment to predecessor in interest under the State Policy dated 28.02.1984 stood closed on resumption orders passed in the year 1994 for non deposit of stated amounts and no fault can be found in the approach adopted by the Financial Commissioner. The reliance of the petitioners on the judgment Annexure **P-12** is completely misplaced because the petitioners of the said writ petition had already approached this Court within time and agitated the matter. It was during the pendency of the said writ petition that the Act of 2008 as well as Rules of 2011 came into existence. Therefore, the Hon'ble Division Bench had considered and ignored the said subsequent developments and passed the order Annexure **P-12** permitting the offerees to deposit the balance amounts at revised rates on original allotments. In the present case, after passing of the order by Tehsildar (Sales), Faridabad on 14.7.1994, there is a complete silence of atleast 19 long years. This considerable delay is unjustified and cannot be condoned. Hence there is no similarity between the facts of the present cases and the facts of the judgment relied upon by the petitioners.

In view of the above, finding no merit in the present writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

April 29, 2015
Vinay