IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.615 of 2015(O&M)

Date of Decision:-October 9th, 2015

Indian Hardware Industries Ltd.

.....Petitioner.

Versus

State of Haryana & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Chetan Mittal, Senior Advocate assisted by
Mr. Udit Garg, Advocate for the Petitioner.

Mr. Amar Vivek, Additional Advocate General, Haryana
for the respondents.

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JASWANT SINGH, J.

1. Challenge in the present writ petition is for quashing of the order/letter dated 15.12.2014 (**P-16**) whereby the earlier communication dated 24.11.2014 (**P-14**) demanding deposit of 25% of the total sale consideration along with other charges issued in compliance of the order dated 13.10.2014 (**P-12**) permitting transfer of 3426 sq. yards of residential area in possession passed by the respondent-Tehsildar(Sales), Faridabad has been withdrawn.

2. In brief, undisputed facts of the case are that two parcels of land total measuring 7.79 acres, *first parcel* being known as factory building along with land (combined area measuring 4.17 acres) and *second parcel* being residential complex consisting of 4 Bungalows over a piece of land

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measuring 3.62 acres i.e. 17562 sq. yards was leased out to M/s Indian Hardware Industries Limited (hereinafter referred to as the petitioner) by the Government of India for a period of five years as per Memorandum of Agreement dated **23.09.1954** (**P-1**). Government of India gave the possession of the property to the company following this agreement. No other extension of the agreement was ever made. The company purchased factory area along with building from the Government of India and a Sale Deed to this effect was executed on 22.10.1970 by the Government of India for land measuring 4.17 acres. This sale was effected under the The Displaced Persons (Compensation and Rehabilitation) Act, 1954. However, offer of sale of residential complex was also made to the company but for one reason or the other the sale of the residential complex measuring 3.62 acres could not materialize and remained under litigation, essentially because the parties could not settle upon the rate of property.

3. In the year 1981, under the administrative and financial arrangement, the Government of India transferred all residuary assets of NIT, Faridabad to State Government including the four bungalows with an area of 17562 sq. yards against payment. Meanwhile, the company had gone into liquidation and remained so from 1971-79. During this period many unauthorized persons made intrusions and encroached upon different pieces of the disputed property. With the passage of time, more than a dozen people, most of whom who did not have anything to do with the company came to be in possession of different pockets of the land. These occupants, including the company approached the State Government for transfer of land under their respective possession under the Policy and Rules in existence at that time. The Government Policy at that time intended to

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dispose of those land/sites which had been under unauthorized occupation for a considerable time and which had substantial construction upon it for bona fide use of the occupants.

4. In order to dispose of the pending claims which was over 3.62 acres, a Commission comprising the Senior Town Planner, Municipal Corporation, Faridabad, Tehsildar(Sales) Faridabad and Naib Tehsildar Agrarian, Faridabad was constituted to survey the area and enlist the possession and of the said construction existing at site. The Commission visited the site on 12.09.1996 and inked its report on 30.09.1996. A site plan was prepared and 13 pockets were shown in possession by way of occupation with *pucca* structures. After submission of report by the Commission on 30.09.1996, the company did not file any appeal against the said report and the same attained finality. The situation at the site has admittedly not changed since the report of the Commission.

5. In the meantime, the respondent-State brought in a new Act by the name of The Haryana Evacuee Property(Management and Disposal) Act, 2008 (hereinafter referred to as '2008 Act') and along with it also framed The Haryana Evacuee Property (Management and Disposal) Rules 2011 (hereinafter referred to as "2011 Rules"). The 2008 Act was amended by the State Government vide notification dated 6.4.2010 whereby Section 2,4 along with other sections were amended.

6. For better understanding, the relevant Sections as amended as well as Rules are being reproduced hereunder:-

(**a**) **<u>Rule 10(1) & (2) of the 2011 Rules</u>**,

(**1**) *An application for transfer of urban property by an occupant or his successor-in-interest, who is in possession*

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of the same from 1st January. 2001 or earlier, shall be made to the Tehsildar concerned along with relevant documents in support of his claim within a period of six months from the date of notification of these rules or the date subsequently fixed by the State Government from time to time.

(2) The application so received by the Tehsildar shall be scrutinized by him after verifying the eligibility from the relevant documents including voter identity card or electricity bill or telephone bill or water charges bill or any other relevant documents, The applicant shall prove continuous and undisputed possession from Ist January,200I or earlier.

(b) As per the amended ***Section 4 of the 2008 Act (amendment made vide Notification dated 06.04.2010)***, it was made clear that

Section 4-Power to transfer Evacuee Property

(1) *Notwithstanding anything to the contrary contained in any judgment, order, decree or decision of a court of law or an authority, no allotment of Evacuee Property shall be made by any person except as per the provisions contained in Clauses (a) to (g) of Sub Section 2".*

(2) The Tehsildar may transfer any Evacuee property, except under Clause(c), of such terms and conditions as may be prescribed".

Section 4(2)(f) is also relevant for the purpose of adjudicating the present dispute which reads as under:-

" (f) to the person on the basis of his possession under

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any Policy, scheme or rules; ***”***

Admittedly, the State Government has a Policy of allotting the land to an unauthorized occupant of a property and the definition of unauthorized occupant has been given under **Section 2(k)** which reads as follows:-

Section 2(k)

“ “unauthorized occupant” means a person who is in unauthorized occupation of any evacuee property-

(i) where he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant or public auction; or orders of any competent authority; or

(ii) where he, notwithstanding anything contained in para (i) has, whether before or after the commencement of this Act, entered into possession thereof in pursuance of an order obtained by him by means of fraud, misrepresentation or concealment of any material fact; or

(iii) . where he, being an allottee, lessee, grantee or auction purchaser, has by reasons of the determination or cancellation of his allotment, lease, grant or auction in accordance with the terms in that behalf therein contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such evacuee property; or

(iv) where he has purchased any evacuee property from an allottee or legal heir of the allottee, as the case may be, and entered into possession thereof in pursuance to sale deed of such property and subsequently such allotment has been cancelled; or

(v) where any person authorized to occupy, any evacuee property has, whether before or after the commencement of this Act-

(a) sublet, in contravention of the terms of the allotment, lease, grant or auction without the permission of the State Government or of any other authority competent to permit such subletting, the whole or any part of such evacuee property; or

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(b) otherwise acted in contravention of any of the terms, express or implied under which he is authorized to occupy such evacuee property.

Explanation.- *For the purposes of sub-clause (a), a person shall not merely by reason of the fact that he has paid any rent, be deemed to have entered into possession as allottee, lessee, grantee or auction-purchaser;* ***"***

(c) ***Rules 12 and 13 of 2011 Rules*** provide for the procedure of allotment and when it would be deemed to be final. The said Rules are reproduced here under:

12*. (l) On receipt of an application for transfer of land/ property, the Tehsildar shall enter all such applications in a register and scrutinize the same under these rules and determine the eligibility of each applicant for transfer of such land/property.*

(2) In determining the eligibility of the' applicant, The Tehsilar shall ensure that applicant's possession is established to be continuous and undisputed from 1st January 2001 to the date of scrutiny of his case from the entries made in the revenue records or from other documentary evidence:

Provided that in a case where the entries in the revenue record are found to be doubtful or have been tampered with or where any entry in the revenue record is found to have been corrected after coming into force of the Act or evidence has been found to be tampered or fabricated one, The Tehsildar shall reject the same after affording an opportunity of being heard to the applicant. The Tehsildar shall initiate proceedings for eviction of the unauthorized

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occupant and for disposal of the property.

13. *Where the Tehsildar is satisfied after scrutiny of the revenue record and other documentary evidence produced by the applicant that the occupant is eligible for the transfer of property in his psosession, he shall pass a speaking order in this regard. The use and occupation charges shall be recovered within one month of the transfer order in favour of occupant and the charges shall be non refundable.* ***Thereafter the Tehsildar shall refer the case to Commissioner (Sales) for passing appropriate orders. In case the transfer in favour of the applicant is approved by the Commissioner (Sales), the Tehsildar shall issue notice for recovery of twenty five percent of the total price which shall be paid within one month from the receipt of the notice failing which the application shall be rejected by the Tehsildar.***

Provided that where the Commissioner (Sales) is not satisfied with the transfer, as ordered by the Tehsildar, he shall pass an appropriate order regarding rejection of the application after affording an opportunity of bearing heard to the applicant. **(emphasis supplied)**

(d) ***SECTION 9 OF THE 2008 ACT- Residuary Powers of State Government***

" ***SECTION 9 -*** *The State Government may at any time call for the record of any proceedings under this Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent*

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with any of the provisions contained in this Act or the rules made thereunder:

Provided that the powers of State Government under this section shall be exercised by the Secretary:

Provided further that no order which prejudicially affects the interest of any person shall be passed under this section without giving him a reasonable opportunity of being heard. ”

Thus, it is clear that the respondent-state can interfere in the allotment within the set parameters only i.e if the allotment is not made as per Rules/provisions of the Act and in no other situation/circumstance.

7. Previously, the petitioner-company made a representation/ application dated 18.07.2011 (**P-5**) and subsequently an application dated 07.11.2011 (**P-6**) to Financial Commissioner, Government of Haryana for allotment of land as per 2011 Rules, however, no decision was taken on said representation and, therefore, the petitioner-company approached this Court vide CWP No.7633 of 2013 whereby the petitioner-company had sought the interference from the Court for decision of its representation dated 18.07.2011 (**P-5**). Ultimately, this Court disposed of the said petition vide order dated 09.04.2013 (**P-8**) with a direction to the official respondent to consider and decide the representation dated 18.7.2011.

8. In compliance of the order dated 9.4.2013 (**P-8**) whereby the writ petition was disposed of, the Naib Tehsildar (Rehabilitation) passed a detailed speaking order on 19.7.2013 in which it was found that petitioner-company was in possession of 4586 sq. yards against the total claim of 17562 sq. yards. Accordingly the Naib Tehsildar (Rehabilitation) granted

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the relief qua land measuring 4586 sq. yards and declined the relief qua the remaining land. Therefore, the said land was ordered to be transferred in favour of the petitioner-company for a total sum of Rs.8,71,34,000/- as per Rule 10 of the 2011 Rules. It was in pursuance to this evaluation that the petitioner-company had deposited 20% of the amount i.e. Rs.1,74,26,800/- vide challan dated 24.07.2013.

9. In the meantime, respondent-Commissioner (Sales), Faridabad vide order dated 10.09.2013 did not approve of the order passed by the Naib Tehsildar (Sales) and rather directed the Tehsildar (Sales) to make an offer for transfer of 226.13 sq. meters of land only. The order passed by Commissioner (Sales) reads as under:-

> *" In view of the aforementioned facts, observations and deliberations, the Company has failed to prove continuous and undisputed possession from 1st January, 2001 onwards over the land or buildings beyond the three structures marked on the survey plan as site nos.5, 9C and 11 comprising in total area of 226.13 sq. mtrs. I find the order of the Naib Tehsildar (Rehabilitation) flawed and based on wrong inferences. I am not inclined to approve the order of Naib Tehsildar (Rehabilitation) dated 19.07.2013. Indeed, I direct Tehsildar (Sales) to make an offer to the Company for the transfer of 226.13 sq. mtrs of land. "*

10. Thus, the petitioner-company filed a revision petition before the Commissioner Gurgaon Division, Gurgaon exercising the powers of Chief Commissioner under Section 8 of The Haryana Evacuee Properties (Management and Disposal) Act, 2008. The Commissioner Gurgaon

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Division, Gurgaon vide order dated 18.11.2013 (**P-10**) set aside the order dated 10.09.2013 (**P-9**) passed by Commissioner (Sales) and restored the order dated 19.07.2013 passed by Tehsildar (Sales) vide order Annexure P-10. In pursuance to the said decision, the respondent-Tehsildar (Sales), Faridabad issued a letter dated 4.12.2013 to the petitioner to deposit 25% of the sale price i.e. Rs.2,18,78,657/- and consequently the sale deeds in respect of the area of 4586 sq. yards was executed in favour of the petitioner-company.

11. However, as far as the finding of the Naib Tehsildar in his order dated 19.7.2013 as well as order dated 10.09.2013, in respect of the rest of the area was concerned, the petitioner fought the same by filing a separate revision under Section 8 of the 2008 Act before the Chief Commissioner. The said revision was allowed to the extent that petitioner was not given an opportunity of hearing and was directed to produce the evidence and consequently the matter was remanded back to Naib Tehsildar (Sales), Faridabad vide order dated 4.7.2014 (**P-11**).

12. Upon remand, respondent-Tehsildar (Sales) Faridabad vide its order dated 13.10.2014 held that petitioner has proved its claim additionally in respect of 3426 sq. yards only since 01.01.2001 and denied rest of the relief of the petitioner-company. Accordingly, the said land was ordered to be transferred in favour of the petitioner. Not only this, a statement of the representative of the petitioner-company was also recorded to the effect that in case its claim in respect of 3426 sq. yards is accepted, it would not raise any claim in respect of the remaining land. Thus, the land measuring 3426 sq. yards was ordered to be transferred in the name of the petitioner-company for a total price of Rs.6,50,94,000/-, whereas claim in respect of

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the remaining land was rejected and accordingly petitioner-company was directed to deposit 20% of the said amount i.e. Rs.1,30,18,800/-. The copy of the said order dated 13.10.2014 is on record as Annexure **P-12**. Consequently, the petitioner-company deposited the above mentioned amount vide challan dated 03.11.2014 (**P-13**).

13. Thereafter the petitioner-company received another letter dated 24.11.2014 (**P-14**), issued in terms of Rules 12 and 13 of 2011 Rules, whereby it was directed to deposit another amount of Rs.2,13,43,980/- being 25% of the total price as well as use and occupation charges to the tune of Rs.40,56,390/- as well as cost structure of Rs.1,11,152/- within a period of 60 days. The said amount has also been deposited vide Annexure **P-15**. The Tehsildar (Sales) in his office noting dated 11.11.2014/18.11.2014 has acknowledged the receipt of Rs.1,30,18,800/- vide challan no.034578004 dated 11.11.2014 and on this noting, the learned Commissioner(Sales) had written as follows:-

1. *Take new and latest rates from the Committee as applicable on the date of order of Tehsildar.*
2. *ADA/DMO to check admissibility of claim and rates and other legalities also.*

In effect, the learned Commissioner (Sales) had approved the order passed by the Tehsildar (Sales) and had applied his mind while directing the Tehsildar (Sales) to verify the applicable rates. Thus, as per Rules 12 and 13 of 2011 Rules, the sale had become final.

14. However, vide its impugned letter dated 15.12.2014 (**P-16**), the petitioner company has been intimated that Commissioner, Faridabad has withdrawn the letter dated 24.11.2014 (**P-14**) in which no reason has been

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given and thus, the said letter (**P-14**) has been impugned in the present writ, whereby the sole dispute remains about allotment of 3426 Sq. yards of land and qua the remaining land, the dispute already stands settled.

15. Upon notice, respondent no.2-Tehsildar (Sales) Faridabad has filed a detailed reply whereby it has stated in para no.3 that respondent no.2 had issued the demand notice dated 24.11.2014 (**P-14**) to the petitioner-company for depositing the amount in respect of plot no.C-9 & 11 measuring 3426 sq. yards. However, two different orders were passed in the revision proceedings against the same order and hence it was proposed that clarification was required from the worthy Commissioner and till such clarification, it was considered necessary that demand notice should be withdrawn. It was further submitted that the respondent no.2 had never cancelled the allotment of the plot in question to the petitioner. It was further stated that the Commissioner, Gurgaon has further sent a reference to the Additional Chief Secretary and Financial Commissioner to Government of Haryana, Revenue and Disaster Management Department (Rehabilitation Branch), Chandigarh which has been admitted and notices have been issued to the parties and the said matter is pending consideration before the said Authority and thus, it was prayed in the written statement that the petition is liable to be dismissed. Therefore, in nutshell, the respondent-State admits the validity of order dated 13.10.2014 (**P-12**) and say only a clarification has been sought from State as per Section 9 of the Act, 2008 as amended in 2010.

16. On the strength of the facts observed above, learned Counsel for the petitioner has argued:-

(i) that the Commissioner (Sales) Faridabad has passed order dated

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10.09.2013 (**P-9**) regarding the claim for allotment of the entire area, the Commissioner while considering the case for approval decided the same as if exercising his powers of Appellate Authority that necessitated resorting to filing of revision rather than an appeal. However, since no objection was taken at the relevant time, clock cannot be turned at this stage.

(ii) Secondly it was argued that as regards the merits of the claim regarding allotment of remaining land before the second revision, the issue was remanded back to the Tehsildar for consideration of material initiating such allotment. The same having been done vide order dated 13.10.2014 (**P-12**), the respondents cannot be permitted to turn around.

(iii) Lastly, it was argued that the arguments raised before this Court on factual aspects are beyond the facts of record, whereby the matter has been only referred qua the filing of two revisions and, therefore, cannot be looked into the validity of the impugned order (**P-16**).

17. On the other hand, learned Counsel for the respondents-State has argued:-

(a) that once the application dated 18.07.2011 (**P-5**) for allotment of the entire area of 17562 sq. yards was decided by the Tehsildar (Sales) vide order dated 19.07.2013 agreeing for grant of 4586 sq. yards, appeal was not filed within limitation, then the revision filed was not maintainable.

As an ancillary argument, it is argued that even the revision was not filed within the period of limitation and, therefore, revision is not maintainable.

In the alternative, it is argued that even if the revision was entertained and decided, vide order dated 18.11.2013 (**P-10**), then by applying the principles of Order 2 Rule 2 CPC, the second revision which

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culminated into passing of the order dated 04.07.2014 qua the remaining portion of unallotted residential area was barred. Still further, it is argued that merely by reserving the right in the grounds of revision while filing the first revision, without there being specific order granting that permission, the second revision culminating into passing of the order dated 04.07.2014 was not permissible.

(b) Secondly, it was argued that by moving an application dated 04.06.2013 (**R-4**) with the affidavit dated 01.08.2015, the petitioner-Company had restricted its right to allotment for 4586 Sq. yards only and that having resulted into passing of order dated 19.07.2013 by the Tehsildar has been upheld by the order dated 18.11.2013 (**P-10**) by the Revisional Authority, would bar the petitioner-Company on the principle of acquiescence from raising any further claim qua the remaining unallotted land.

It is argued that even from the bare reading of the second ground of revision Annexure **P-19**, it cannot be reducible that claim is raised qua the remaining portion of the area beyond 4586 sq. yards.

(c) Thirdly it is argued that keeping in view the conduct of the petitioner-company regarding racking up the issue of allotment from the remaining land bordering on abuse of the process of law, the issue has been forwarded in reference and, therefore, as such no prejudice has been caused.

(d) Fourthly it is argued that in the absence of execution of any proper lease deed, mere execution of a memorandum of a lease at Annexure P-1 would not bound the Government to treat them as lessees having any right of possession in law.

(e) Fifthly it is argued that on merits regarding the possession of an

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additional area of 3426 sq. yards is not borne out from the records or any material in the writ petition, therefore, he cannot seek any indulgence from this Court.

(f) Lastly, it was argued that the Deputy Commissioner, Faridabad-cum-Commissioner (Sales) although had granted approval for transfer of the land, however, his subsequent withdrawal vide order dated 15.12.2014 (**P-16**) being an administrative function, in the light of the circumstances of passing of the order in the second revision, the impugned order of withdrawing the permission making a reference cannot be faulted.

18. After hearing learned Counsel for the parties and perusing the paper book with their able assistance, this Court is of the considered view that the present petition deserves to be allowed.

(i) As far as the argument raised by learned Counsel for the respondent-State to the effect that since no appeal was filed against the order dated 19.07.2013 passed by Tehsildar (Sales) within limitation, the revision filed by the petitioner was not maintainable and even otherwise, the revision itself was barred by limitation, this Court is of the opinion that the same is without any merit. It is apparent from the nature of proceedings as well as the facts which have been noted above that the Commissioner(sales), while considering the case for approval, decided the same as an appeal that necessitated the company to resort to filing revision rather than an appeal. Further the Commissioner (Sales) had applied his mind while accepting the order of Tehsildar (Sales) and therefore, it cannot be said that there is no order at all. If an Authority has taken cognizance of a matter as an Appellate Authority and decided it subsequently assuming itself to be an Appellate Authority, mere non description of an order as an order decided in appeal,

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will not nullify the observations made by the Commissioner or make the order bad for want of jurisdiction. The Rules have been framed for necessary guidance of the Authorities who are acting in a quasi judicial capacity. The procedure enunciated in the said Act and Rules is not to be necessarily taken in its strict sense. The undisputed facts of the case establish that both the parties were very well aware of the dispute involved and the nature of the orders which were passed by the Authorities and taken up for judicial scrutiny in a quasi judicial capacity uptill revision. It is apparent that no such objection was taken by the respondent-State before the Authorities concerned and it is for the first time that this objection has now been taken before this Court. In view of the peculiar facts of the case, this Court has no hesitation in holding that the objection regarding maintainability of the petitions filed before the Authorities concerned is completely frivolous and thus cannot be sustained. The objection of applicability of Principles of Order 2 Rule 2 CPC, as raised by the Counsel for the State is also erroneous because the facts of the present case speak for themselves, as it is apparent that the Authorities have been considering the claim of the petitioner-company at various stages and have dealt with it without their being any objection of Order 2 Rule 2 at any point of time. Thus, the first argument raised by learned Counsel for the respondent-State has to be rejected and that of the petitioner-company accepted.

(ii) The second argument of the learned Counsel for the State that the petitioner-company had restricted its right for 4586 sq. yards of land only, is also misconceived and is a fragmentation of its imagination. It is apparent that the petitioner-company has been agitating its right for allotment of the remaining land by filing a separate revision petition, even

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after sale deeds were executed for the land measuring 4586 sq. yards and vide the subsequent order dated 13.10.2014 (**P-12**), an additional area of 3426 sq. yards was ordered to be transferred in favour of the petitioner-company and in pursuance thereto, a specified amount as per Rules has also been deposited. A co-joint reading of Section 4 of the 2008 Act as amended in 2010 as well as Rules 12 and 13 of Rules, 2011, the Tehsildar (Sales) has been granted the powers to transfer the Evacuee Property on the terms and conditions as prescribed under the Act. However, this power is always subject to scrutiny by the Commissioner(Sales) as mentioned in Rule 13. Proviso to Rule 13 makes it abundantly clear that the Commissioner(Sales) can reject the recommendation of Tehsildar (Sales) for allotment of land, if it is not found to be as per provisions. However, if no such rejections is there, then Tehsildar(Sales) would direct the proposed allottee to deposit 25% of the total calculated amount within a period of one month. In the present case, as observed earlier, Commissioner (sales) passed order dated 19.11.2014, whereby after applying his mind, he had asked Tehsildar(sales) to sell off the property at the new and latest rates. Thus, in effect, the Commissioner (Sales) had approved the allotment of disputed property and this order had become final. Only formalities were left to be completed. The matter could have only been opened if there was any default for payment on behalf of the petitioner-company. Admittedly, there has been no default on part of the petitioner-company till date. Thus, the argument of respondent-State, as referred above, is also devoid of any merit.

Not only this, the Tehsildar, Faridabad, in para 5 of his affidavit dated 5.8.2015, has admitted that 9550 square yards approximately of vacant land arising out of the present disputed land has been allotted to 09

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persons whose details have been given in the said affidavit. Thus, it is completely baffling for this Court to understand as to why process for allotment has been stalled by respondent-State qua allotment of land to the petitioner-company, who falls within the policy for the purpose of allotment of land as defined under Section 2(k) of the 2008 Act, especially when the claims of others persons who are in possession already stands adjudicated and land stands allotted to them/ or is nearly finalized for allotment.

(iii) As far as the remaining arguments raised by the learned Counsel for the respondent -State are concerned, they are interconnected with each other and are being decided together for the sake of convenience because in nutshell what is borne out from these arguments is that the petitioner-company's conduct is such that no land should be allotted to it and further, since there being no proper lease deed, it cannot be stated that the petitioner-company was in authorized occupation.

The said arguments of the respondent-State are also without any merit and rather contradictory to the proceedings which have been carried out by the department till date. The reason for such observation is because it is an admitted position that although there was no formal lease agreement between the parties still, the respondent-State had been accepting lease money from the petitioner-company for considerably long period of time and thus, the status of petitioner company was presumed to be that of a lessee by the State itself. Hence, nature of the possession of petitioner-company was not of an unauthorized occupant/trespasser but that of being in settled possession, till the time rent was paid by it i.e. somewhere till 1995. Thereafter no rent/lease money had been paid, but admittedly the company remained in possession of certain land as as occupant, which can,

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at the most be termed as unauthorized but not of a trespasser. Thus, under the Rules of 2011 as well as provisions of 2008 Act, and also considering the admitted position that petitioner-company was in possession of land, it is indeed apparent that petitioner-company was entitled for allotment of land qua the portion in which it was in occupation as it falls under the defination of "unauthorized occupant" as envisaged in Section 2(k) of 2008 Act, as amended in 2010, and a finding of fact has been recorded by the Authority below, after conducting a proper enquiry. Thus, the respondent State cannot be permitted to wriggle out by relying upon certain records which are neither here nor there, as the finding regarding the petitioner-company being in possession of particular area is a finding of fact, in which the Court will not interfere. Furthermore, the argument of Ld. Counsel for the State is completely contradictory to the written statement filed by the State because as per the written statement, the allotment has not been cancelled, but has been stalled, that also not on the ground that the petitioner-company was not entitled for allotment, but for the reason that there is a procedural lapse.

19. Thus in the totality of the facts and circumstances of the present case, it is apparent that the impugned order/letter withdrawing the allotment of land measuring 3426 sq. yards is completely erroneous, without any basis and thus, liable to be set aside. The stand of the respondent-State that a reference has been made to the Additional Chief Secretary, Government of Haryana for necessary action also seems to be a method of wriggling out from the contractual/statutory liability which is now envisaged upon the Authorities in view of the orders passed by the Authorities concerned. As per Section 9 of the 2008 Act, as amended in 2010, the State Government

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has been conferred with wide powers to call for the record at any time in any proceeding under the Act and further to pass such order in relation thereto as in its opinion, the circumstances would require and is not inconsistent with any of the provisions contained in the Act or the Rules made thereunder. Meaning thereby, the State Government would scrutinize the records and pass an order only in such cases where it seems or it is found apparent from the record that an allotment has been made by the officers concerned beyond the purview or scope of the Act or where any of the provisions of the 2008 Act (as amended in 2010) or Rules made thereunder have been violated. In no other case State Government would pass any other order effecting the allotment. In the present case, as has been observed by this Court and as is evident from the Act and conduct of the respondent-State itself, the respondent-Department has been allotting the land to those persons who are in unauthorized occupation within this very land and these sales have already been approved, but for the land to be allotted to the petitioner-company, the State/Department is now delaying the matter. Not only this, a parcel of land has also been allotted to the petitioner-company by verifying the factual position and it is only regarding the remaining land measuring 3426 sq yds that the respondent-department has asked for reference to the State, despite the fact that the sale of this parcel of land i.e. 3426 sq. yards has already been approved by the Commissioner(Sales) and a part of the payment as enumerated above, has already been deposited by the Petitioner-company as per the prescribed Rules.

CONCLUSION

20. Thus from the observations made herein above it is clear that

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firstly, the petitioner company was entitled for allotment of land as per Policy/Rules of the year 2011 as observed in para 33 of this Judgment and admittedly the respondent-State has considered the petitioner-company's claim as falling under the Rules 2011 and thus, the stand of the respondent-State in the present writ petition after a lapse of so many years that the petitioner company cannot be allotted the land smacks of mala fide because under the same Policy, land measuring 4586 sq. yards has been allotted to the petitioner-company as well as to some of the other unauthorised occupants as has been detailed in the affidavit filed by the respondent-State and observed by this Court in para no.31 and 34 of this order.

Secondly, once it is held that the petitioner company was entitled for allotment, then it is to be seen that whether the allotment of of 3426 sq. yards of land has already been made in favour of the petitioner-company as per the Rules and whether the same can be reopened by exercising the powers under Section 9 or not. The answer to this question is discussed herein above in para no 13 and 31 of the Judgment which talks about the manner in which it was found to have been allotted properly and attained finality in view of Rules 12 & 13 of the 2011 Rules, as reproduced in the preceding paragraphs of the judgment wherein the Tehsildar (sales) had already determined the eligibility of the petitioner-company and after satisfying itself and exercising his judicial mind had allotted the petitioner-company 3426 sq. yards after taking an undertaking from the company that it shall forego its claim qua the remaining land, which has been subsequently approved by the Commissioner (Sales) while exercising powers under Rule 13 of the 2011 Rules. The proviso to Rule 13 is itself very clear which says that if the Commissioner (Sales) is not satisfied with

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the transfer, he can pass an appropriate order regarding rejection of the application. However, as observed in preceding paragraph no.13 of this order the Commissioner(Sales) applied his judicial mind and approved an order passed by Tehsildar (Sales) and thus, he had approved all the orders which is also evident from the fact that after approval of the Commissioner (Sales) the petitioner-company was directed to deposit 25% of the total price which admittedly, has been deposited by the petitioner-company.

Ultimately , keeping in view the facts of the present case, it is held that the respondents are estopped by their own act and conduct from raising a plea that since the matter is pending before the Chief Secretary/State exercising the powers under Section 9 of the Act and, therefore, the sale/allotment of 3426 sq. yards has been put on hold. This court has already discussed in the preceding paragraphs (paragraph 34 to be specific) that only where the Tehsildar (Sales) or the Commissioner (Sales) have not followed the statutory Rules or the provisions of the Act, the State would cancel the allotment. No such violation of any statutory Rule or provisions of the Act has been violated. Therefore, by putting on hold the completion of allotment in favour of the petitioner company, the respondent-State has unnecessarily led to the present litigation, which, in my mind was not required. Hence the said Act of putting on hold the completion of sale by the respondent-State is declared as bad in the eyes of law and it is held that petitioner-company is entitled for allotment of 3426 sq. yards of land.

DIRECTIONS

21. In view of the above facts and circumstances, this Court is of the opinion that the stand taken by the respondent-Department that since

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reference has been made to the State and it is still pending, therefore, the allotment cannot be made is absolutely illegal without any basis and is, therefore, not justified and declared as bad. The main reference pending under Section 9 of the 2008 Act is without any base and meaningless in view of the observations made herein above and thus it is directed that the sale deed/allotment of the remaining land i.e. 3426 sq. yards be made in favour of the petitioner-company within a period of 2 months from the receipt of certified copy of this order, with a rider that petitioner-company shall deposit the amount as per Rules within the time frame prescribed by the Tehsildar (Sales). The Tehsildar (Sales) shall intimate the petitioner-company about the scheme of payment which shall be strictly adhered by the petitioner-company. However, the Tehsildar (Sales) is directed to grant sufficient time to the petitioner-company for the payment of the aforesaid amount by following the provisions of 2008 Act as amended in 2010 along with 2011 Rules.

Allowed in the above terms.

(JASWANT SINGH)
JUDGE

October 9th, 2015
Vinay

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