

**CM-8693-2013 in/and
CWP-2190-1984**

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

**CM-8693-2013 in/and
CWP-2190-1984
Date of Decision: October 27, 2016**

Pritam Kaur and others
.....petitioners
Versus
The Improvement Trust, Ludhiana and others
.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

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|----|---|---------|
| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |
| 4. | To be referred to the Reporters or not? | Yes/No |
| 5. | Whether the judgment should be reported in the Digest? | Yes/No. |
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Present: Mr.Madhav Khurana, Advocate and
Mr.Jai Singh Brar, Advocate
for the petitioners.

Mr.Sandeep Khunger, Advocate
for the respondents.
.....

SURYA KANT, J.

CM-8693-2013

Heard.

With the consent of leaned counsel for the parties, the main case
is taken on Board for hearing today itself.

CWP-2190-1984

[1] The first petitioner alongwith her three daughters, namely,
petitioner Nos.2 to 4, seeks a mandamus to direct the Improvement Trust, Ludhiana
(for brevity,`the Trust`) to consider and allot them residential plots being `Local

Displaced Persons` in accordance with the provisions of `Utilisation of Land and

Allotment of Plots by Improvement Trust Rules, 1975 (for brevity, 'the 1975 Rules').

[2] Brief reference to the facts may be noticed as under:-

[3] Petitioners were owners of the land measuring 8 bighas and 18 biswas, i.e. 26700 square yards (approximately measuring 5.53 acres, minus the residential house exempted from acquisition) in the revenue estate of village Taraf Gahlewal, Tehsil and District Ludhiana, description whereof is given in para 2 of the writ petition. The above-stated land was acquired by State of Punjab for execution of "2.2 Hectares Development Scheme", floated by the Trust. The State Government/ Trust took a decision and pursuant thereto, residential building of the petitioners measuring 1667 square yards was exempted from acquisition vide Resolution No.17 dated 24.03.1976. Thereafter the Award was passed on 09.11.1976.

[4] It is an admitted fact that at the time of acquisition 'Utilisation of Land and Allotment of Plots by Improvement Trust Rules 1975' framed by State of Punjab in exercise of its powers under Section 73 of the Punjab Town Improvement Act, 1922 (for brevity, 'the Act'), were in force. Rule 2(a) of these Rules defined 'Local Displaced Person', to mean a person who is the owner of a property acquired by the Trust for the execution of a Scheme and has been such owner for a continuous period of two years immediately before the first publication of the Scheme by the Trust under Section 36 of the Act. Rule 7 of these Rules pertained to '**Reservation of Plots and Tenements**', and it used to read as follows:-

“7(i)(a) 15 percent and 3 percent of the tenements or plots in group I, II and III shall be reserved for allotment to the persons belonging to Scheduled Castes and Backward

Classes, respectively.

(b) 10 percent of tenements in groups I, II and III and 5 percent of the plots in group IV shall be reserved for allotment to such categories or class of persons as may, keeping in view the socio-economic factors governing such categories or class or persons, be specified by the Government from time to time. Such tenements and plots shall be allotted by the Trust at reserve price with the disposal of the Government.

(ii) A local displaced person may be allotted a plot upto the size of 500 sq.yds on freehold basis, on reserve price calculated on the basis of the formula in the Annexure, if the area of the land owned by him and acquired by the Trust is more than 500 sq.yds. If the area of the acquired land is less than 500 sq.yds. the local displaced person shall be entitled to allotment of plot which is nearest in size, next below the area of his land, which has come under acquisition.

(iii) The tenements and plots remaining after meeting the requirements of sub-rules (i) and (ii) shall be transferred to the general quota. Separate registers of applications shall be maintained one for the Scheduled Castes, another for the Backward Classes and the third one for the other classes.”

[5] It may be seen from Rule 7 (ii) of the 1975 Rules that there used to be reservation in favour of ‘Local Displaced Person’ pursuant to which a plot **‘upto the size of 500 sq.yds on freehold basis, on reserve price to be calculated as per the prescribed formula, could be allotted provided that the area of acquired land was more than 500 sq.yds.’**

[6] The petitioners applied for allotment of residential plots in the category of ‘Local Displaced Person’. When no decision was taken in respect of their claim, they approached this Court in the year 1984.

Single Judge who allowed the same vide order dated 30.08.2006. The Trust filed an Intra-Court Appeal under Clause X of the Letters Patent and a Division Bench of this Court vide order dated 05.08.2009 allowed the Trust's appeal and dismissed the petitioners' claim on three counts, namely, (i) the spirit of 1975 Rules was to rehabilitate persons who are displaced by acquisition and since the residential house of the petitioners stood exempted, they cannot be termed as 'Local Displaced Persons'; (ii) Rule 7(ii) uses the expression " May be allotted" which implies that power is to be exercised having regard to the objective of the Scheme; and (iii) the petitioners were guilty of approaching the Court after a long delay of about eight years.

[8] The petitioners challenged the Division Bench decision of this Court before the Hon'ble Supreme Court and their Civil Appeal No.3894 of 2013 was allowed on April 16, 2013, thereby setting aside the orders of Division Bench as well as Single Bench of this Court and remanding the case for fresh disposal in the following terms:-

“(i) The impugned judgment and the order passed by the learned Single Judge are set aside and the matter is remitted to the High Court for fresh disposal of the writ petition filed by the appellants;

(ii) Since the matter is sufficiently old, we request the High Court to make an endeavor to dispose of the writ petition afresh as early as possible, but latest within a period of 9 months from the date of receipt/production of copy of this order; and

(iii) The parties may, if so advised, file additional affidavits and documents including the Scheme framed in 1975, the relevant Revenue Records.”

[9] In view of the amendment in the High Court Rules that the writ petition has now been listed for final hearing before this Division Bench.

[10] We have heard learned counsel for the parties at a considerable length and gone through the record.

[11] The respondents have taken a categorical plea that the instant writ petition was filed in the year 1984 whereas the 1975 Rules stood repealed by a new set of Rules known as "Punjab Town Improvement (Utilization of Land and Allotment of Plots) Rules, 1983 (for brevity, 'the 1983 Rules') hence, the petitioners are required to establish their eligibility under the new Rules. One of the issue which requires determination is thus whether the claim of petitioners for allotment of plots in the category of 'Local Displaced Persons' is governed by the 1975 Rules or 1983 Rules?

[12] Having pondered over this issue, we are of the view that petitioners' claim has to be determined under the 1975 Rules and not under the 1983 Rules. We say so for the reasons that firstly the Hon'ble Supreme Court while remanding the case vide order dated 16.04.2013 has in so many words observed that this Court committed an error by deciding the writ petition '*without having the benefit of going through the Scheme framed by the Trust in 1975.....*'. It is undeniable that the 1975 Scheme referred to by the Apex Court is nothing except the 1975 Rules only. Suffice it to say no Scheme other than the 1975 Rules was formulated by the Trust or the State Government to regulate the allotment of plots to 'Local Displaced Persons'. Secondly, at the time of acquisition when the Award dated 09.11.1976 was passed, the 1975 Rules were admittedly holding the field and there was no other Scheme or Rule governing the claim of displaced persons. Thirdly, the 1983 Rules were notified on 22.12.1983 and Rule 1(2) of these Rules expressly states that '*they shall come into force at once*'. These Rules are prospective, without any retrospective effect. Fourthly, the cause of

action to seek allotment accrued in favour of the petitioners on or immediate after 09.11.1976 as with the acquisition of their land, they fell in the category of 'Local Displaced Person', as defined in Rule 2(a) of the 1975 Rules. We, thus, hold that claim of the petitioners has to be determined under the 1975 Rules only.

[13] Adverting to the Scheme of 1975 Rules, the plea taken by the Trust to dislodge the petitioners' claim is that their residential house measuring 1667 sq.yds. has already been exempted from acquisition, therefore, they cannot claim the status of 'Local Displaced Persons'. This objection of the Trust, in our considered view, cannot sustain in view of the Hon'ble Supreme Court decision in Jaidev Inder Singh vs Amritsar Improvement Trust (Civil Appeal Nos.1411-1412 of 2016, decided on 16.02.2016). The Hon'ble Supreme Court considered the definition of 'Local Displaced Person' as given in the 1975 Rules in the cited decision and has viewed that the said expression '*has to be understood with reference to the acquisition concerned*'. The objection that once a land owner is allotted plot as a 'Local Displaced Person' in lieu of the first acquisition of his property alone would determine his status as a 'Local Displaced Person' at the subsequent stage also, has been rejected. To say it differently, the status as a 'Local Displaced Person' under the 1975 Rules is acquired on the acquisition of one's property '*by the Trust for execution of its Scheme*', provided that such person was owner for a continuous period of two years immediately before publication of first notification to initiate the acquisition process.

[14] The definition of 'Local Displaced Person' under the 1975 Rules read with its interpretation given by the Hon'ble Supreme Court in the cited decision leaves no room to doubt that as soon as the petitioners' property was

acquired by the Trust for execution of the Scheme in question, they acquire the status of 'Local Displaced Person' under the 1975 Rules. By virtue of that status, the petitioners were entitled to be considered for allotment of plots 'upto the size of 500 sq.yds', for admittedly the area of the acquired land which was owned by each one of them was more than 500 sq.yds.

[15] The acquired land was earlier owned by petitioners' predecessor-in-interest, late Gurcharan Singh and after his death all of them being his 'legal heirs' succeeded to his estate. Such succession had taken place well before the Award, dated 09.11.1976, was passed. In this manner, on the relevant date all the four petitioners fell within the meaning of 'Local Displaced Person' and were entitled to be considered for allotment of plot as per Rule 7(ii) of the Rule *ibid*. Thus, each one of them individually were entitled to allotment of a plot, also for the reason that Rule 1983 being inapplicable, the Trust cannot apply proviso to Rule 4(2) of the 1983 Rules which provides that the 'Local Displaced Persons' having a joint khata being co-sharers shall be allotted only one plot.....'. No such condition is found incorporated in the 1975 Rules.

[16] The petitioners comprised four 'Local Displaced Persons'. Each one of them independently qualifies the eligibility condition for allotment of a residential plot under Rule 7(ii) of the 1975 Rules.

[17] Since exemption of residential house of the petitioners/ their predecessor-in-interest was made well before the acquisition of their land, namely, before passing the Award, the same does not 'disqualify' the petitioners from the allotment of plot(s) in the category of 'Local Displaced Persons'. There can be no escape but to hold that the petitioners were indeed entitled to such allotment under the 1975 Rules.

[18] Having held so, the next question which arises for consideration is as to what should be the size of the plots to be allotted to the petitioners?

[19] As noticed earlier, the total land of the petitioners acquired by the Trust was more than 5 acres. Rule 7(ii) or any other provision of the 1975 Rules does not enlighten as to what would be the sizes of the plot to be offered to 'Local Displaced Person' and on what basis? The expression 'upto' on a plain consideration means that the maximum size of the allotted plot can be 500 sq.yds. provided that the area of the acquired land is more than 500 sq.yds. However the Rules are silent in respect of the size of the minimum acquired area or the corresponding size of the plot to be allotted to a 'Local Displaced Person'. Such a deficiency in the 1975 Rules was later on rectified by the Rule making Authority while framing the 1983 Rules as Rule 4(2) of the 1983 Rules provides the following criteria:-

“4(2) A local displaced person shall be allotted a residential plot on reserve sale price in accordance with the following criteria; provided he applies for such allotment in Form 'A' within a period of three years from the date of taking over the possession of his land acquired by the Trust:-

(i)	If the area of land acquired is not less than ½ acre and is not more than one acre or if the land acquired consists of a dwelling unit even though it is less than ½ acre;	100	Square	Yards
(ii)	If the area of land acquired exceeds one acre but does not exceed two acres;	200	Square	Yards
(iii)	If the area of land acquired exceeds two acres but does not exceed three acres	300	Square	Yards
(iv)	If the area of land acquired exceeds three acres but does not exceed five acres;	400	Square	Yards
(v)	If the area of land acquired exceeds five acres	500	Square	Yards

Provided that the local displaced persons having a joint khata being co-sharers shall be allotted only one plot taking into account the whole or their joint land acquired.”

[20] Having deliberated upon the question of the size of plots to be allotted to the petitioners we are of the considered view that since the allotment claim of the petitioners is governed by the 1975 Rules and not under the 1983 Rules, the above reproduced Rule 4(2) of the 1983 Rules cannot be applied mechanically. It can at the best, serve as a guide for the just and fair decision in respect of the size of the plot to be offered to the petitioners so that neither they are deprived of their right nor such allotment, at this belated stage results into their unjust enrichment. Taking into consideration the totality of the facts and circumstances like (i) the exemption of residential house of the petitioners; (ii) the total land under acquisition; (iii) the guidelines from the 1983 Rules; and (iv) the discretion vested under the 1975 Rules though to be exercised judiciously, we are satisfied that the ends of justice would be adequately met by directing the respondent-Trust to consider and allot a plot measuring 200 sq.yds. to each petitioner even though a liberal interpretation of Rule 7(ii) of the 1975 Rules would make them entitled for allotment of 500 sq.yds. each. Yet another factor which dissuade us to allot plots of bigger size is that ultimately the petitioners are successors to the estate of late Gurcharan Singh and had he been alive at the time of passing the Award, he would have got a 500 sq.yds. plot only.

[21] The objection re: delay in approaching the Court is to be simply noticed and rejected in the light of view taken by this Court in **Monti Roy vs State of Punjab and another** (CWP No.1603 of 2012, decided on 08.10.2012), which reads as under:-

“The delay caused in approaching the Improvement Trust thus should not work to the disadvantage of LDP if he is otherwise entitled to allotment of a plot under the Rules, for no serious prejudice is likely to be caused to the Trust as the petitioner(s) would be entitled to allotment at the current reserved price only.”

[22] For the reasons afore-stated, the writ petition is allowed in the above terms. The petitioners are held entitled to allotment of plots in each case in the manner as was directed in the cited case of **Monti Roy**(supra). The needful shall be done within three months from the date of receipt of a certified copy of this order.

**(SURYA KANT)
JUDGE**

October 27, 2016
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**(SUDIP AHLUWALIA)
JUDGE**