

CWP no. 394 of 2007 (O&M)

and other connected cases

1

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

1) CWP no. 394 of 2007 (O&M)

Dalip Singh

....Appellant(s)

Versus

State of Haryana and others

...Respondent(s)

2) CWP no. 7177 of 2007 (O&M)

Sarwan and others

....Appellant(s)

Versus

State of Haryana and others

...Respondent(s)

3) CWP no. 7407 of 2007 (O&M)

Chint Ram and others

....Appellant(s)

Versus

State of Haryana and others

...Respondent(s)

Date of Decision :06.04.2016

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MRS JUSTICE LISA GILL**

Present : Mr.Adarsh Jain, Advocate for petitioners
in CWP no. 394 of 2007
Mr. Davinder Lubana, Advocate and
Mr. Sushil K Sharma, Advocate for
Mr. M.L.Sharma, Advocate for petitioners
in CWP no. 7177 of 2007

Mr.Davinder Lubana, Advocate for petitioners
in CWP no. 7407 of 2007

Mr. Sudeep Mahajan, Addl. AG, Haryana

Mr. Arun Walia, Sr. Advocate with
Mr. Rohit Mittal, Advocate for respondents no. 2 and 3

MAHESH GROVER, J.

This order will dispose of three writ petitions bearing CWP nos. 394,
7177 and 7407 of 2007.

The petitioners in all the three petitions have filed the instant
petitions claiming benefit of oustees policy to entitle them to plot measuring 500
square yards in the Urban Estate, Panchkula.

It has not been disputed that in CWP no. 394 of 2007 land measuring
24 kanals and 17 marlas was notified under Section 4 of the Land Acquisition
Act and finally the acquisition was confined to 24 kanals and 13 marlas only, in
CWP no. 7177 of 2007 land measuring 40 bighas 4 biswas was notified and
finally the acquisition was confined to 35 bighas 7 biswas only and in CWP no.
7407 of 2007 land measuring 10 bighas 11 biswas was notified and finally the
acquisition was confined to 8 bighas 8 biswas only.

The benefit of the oustees policy was declined to the petitioners as it
contained clause which may be extracted herebelow:-

Clause 2(iii) of the policy dated 7.12.2007 – This benefit will

not be allowed to the applicant whose land has been released

and he will not make such request to the Government for release of his land.”

At the time of the motion hearing, this Court prima facie found this denial of consideration under the oustees policy to be erroneous and expected a re-visitation of the same. For the purposes of reference, motion order dated 15.2.2010 is extracted herebelow:-

“The only issue which arises for consideration in the amended petition is that the policy in question, which is reproduced as under, is not workable:-

“Sub:- Allotment of residential plots/commercial sites to the oustee in the various Urban Estates set up by HUDA.

I am directed to address you on the subject cited above and to inform you that formulation of policy for allotment of plots to the oustee has been engaging attention of HUDA since long. Thus after due consideration the Haryana Urban Development Authority have decided that the plots to the oustee will only be offered if they were owners of land proposed to be acquired for one year before the issue of notification under Section 4 of the Land Acquisition Act of 1894 and the plots will be made available only if 75% of the total land owned by the land owners is acquired. The plots will be allotted to such persons as under:-

1. “Among others, those who own lands upto 500 sq. yds.

Should be offered a plot of 100 sq. yds., those who own land more than 500 sq.yds one acre should be offered plots to 350 sq.yds.

2. If there are a number of owners for particular land efforts should be made to accommodate them subject to the limit of one plot of 250 sq.yds for every acre of land acquired.

Such plot should be offered to the person when he file an affidavit to the effect that he does not held any house/shop or plot in that town. This condition will be in conformity with the decision of the Hon'ble Supreme Court in Pista Devi case.

That land owners will be given compensation for their land which is acquired while they will have to pay for these plots at the normal allotment rate of Haryana Urban Development Authority. Those whose construct houses are released will pay Development cost for their portion of land.

“The persons whose part of the land or some houses have been released from the acquisition and who remaining land stand acquired, should not be considered in the category of oustees for allotment of plots under this category.”

The Hon'ble Supreme Court has also decided in a number of cases that land should be allotted for a house/shop to all those persons whose land has been acquired. Legally, it becomes the

responsibility of Haryana Urban Development Authority to allot/ reserve some commercial sites for oustees. The commercial sites/buildings are sold by auction and under these circumstances such sites/buildings could be considered for allotment to oustees on reserve price as and when the same is held. As and when these sites/buildings are put to auction, the oustees who want to purchase the sites/buildings could represent beforehand for allotment so that requisite number could be reserved for them.

These instructions may be brought to the notice of all concerned.

Yours faithfully,

Sd/-

Administrator (HQ)
for Chief Administration, HUDA
Dated : 10.9.1987.”

The proviso which is reproduced as under works against the main provision of allotment of land to the oustees and is available only if 75% of the total land owned by the land owner is acquired:-

“The persons whose part of the land or some houses have been released from the acquisition and who remaining land stand acquired, should not be considered in the category of oustees for allotment of plots under this category.”

The plea of learned counsel for the petitioner is that in case some of the land has been released and the land acquired of the owners is more than 75% of their holding, there is no provision for allotment of plot under the policy. The benefit of policy is totally

denied to such land owners? Learned counsel for the respondent has relied upon a decision of a Division Bench of this Court in CWP no. 6129 of 2007 Ramo Bai and others versus State of Haryana and others. He prays for time to seek further instructions and reconsider the whole policy in light of the submissions made by counsel for the petitioner.”

Such re-visitation was never done by the respondents but in the meantime, the issue has been settled by a Division Bench of this Court in CWP no. 25066 of 2013 decided on 1.12.2014 titled as **Satyavir Singh Mahlawat vs. State of Haryana and others** where it was observed as below:--

“We have heard learned counsel for the parties at length and find that the action of the respondents in rejecting the claim of the petitioner for allotment of a plot only for the reason that his land measuring 3 Marlas stand released from acquisition is not tenable in law. The petitioner was owner of 65 Kanals 19 Marlas of land i.e. 149 Marlas whereas the land released forms only 2% of the land acquired. A land owner becomes entitled to allotment of a plot if the land acquired is up to 500 square yards. Therefore, for miniscule release of land from the total holding, the claim of the petitioner for allotment of plot in the process of rehabilitation does not seem to be justified.

The matter can be examined from another angle as well.

The land measuring 3 Marlas was released from acquisition which forms part of land measuring 5 Kanals 17 Marlas. The release of land of 3 Marlas will at best relate to the land relating to 5 Kanals 17 Marlas. The claim of the petitioner for allotment of a plot may have to be examined keeping in view the other acquisitions from time to time. For each of the acquisition and/or for the all the acquisition taken together, the petitioner is entitled to a residential plot. The fact remains that since the land measuring 65 Kanals 19 Marlas has been acquired, therefore, the release of 3 Marlas of land cannot bar the petitioner from seeking allotment of a suitable plot in a process of rehabilitation.

Consequently, we set aside the order dated 12.06.2013 and declare the petitioner to be eligible for allotment of a plot in lieu of his land acquired.

However, the claim of the petitioner for allotment of a plot shall be considered as and when respondents decide to publish an advertisement for allotment of plots for the oustees in terms of the directions of this Court in Sandeep's case (supra)."

Learned counsel for the respondents has been unable to point out any

CWP no. 394 of 2007 (O&M)

and other connected cases

8

facts of the instant cases. Consequently, we would dispose of the present writ petitions in terms of CWP no. 25066 of 2013 decided on 1.12.2014, relevant portion of which has been extracted above.

Ordered accordingly.

(Mahesh Grover)

Judge

06.04.2016

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(Lisa Gill)

Judge