

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.19910 of 2014
Date of decision: 25.04.2016

Khori Gaon Colony Kalyan Samiti

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sanjiv Manrai, Senior Advocate with
Mr. Gaurav Talwar, Advocate
for the petitioner in CWP-25576-2015.
Mr. GC Dhuriwala, Advocate
for the petitioner in CWP-19910-2014.
Mr. Randhir Singh, Addl. AG, Haryana,
for respondents No.1 & 2.
Mr. Deepak Balyan, Advocate and
Mr. PK Dwivedi, Advocate for HUDA.
Mr. Mohnish Sharma, Advocate
for respondent No.5 in CWP-19910-2014.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J.

This order shall dispose of two writ petitions i.e. CWP No.19910 of 2014 and CWP No.25576 of 2015, for the question involved for determination is common in both. However, the facts are being culled out from Civil Writ Petition No.19910 of 2014.

A land measuring 6 acres, situated in village Lakkarpur, was purchased by the Department of Tourism (respondent No.1)

from the Municipal Corporation, Faridabad, pursuant to a sale deed dated 05.02.1998. Mutation was accordingly sanctioned in favour of the Department. For, the land was lying open and vacant, people encroached thereupon over a period of time and set up jhuggies/jhopries/kucha/pucca houses. Around 1500-1800 persons, including children, purport to be inhabiting in the said colony since 1992. And the petitioner i.e. Khori Gaon Colony Kalyan Samiti is an Association of those jhuggi dwellers. It was in the year 2012, when the authorities resorted to demolition of these encroachments to clear the site, Civil Writ Petition No.12028 of 2012 was preferred by the petitioner-Association. It was prayed that their jhuggies/jhopries be regularized or in alternative occupants of the colony (Khori Gaon Colony) be allotted suitable alternative site, in terms of the decision rendered by the Division Bench of this court in CWP No.11637 of 1996, decided on 19.04.1999 (Annexure P5). For, a consensus was reached between the counsel for the parties, that in the event a representation is made by the petitioner in respect of their claim, the same shall be decided in accordance with law and under the existing policy, the writ petition was disposed of vide order dated 11.03.2013 (Annexure P1). Accordingly, a representation dated 05.04.2013, was moved by the Association. But it did not yield any tangible result. Resultantly, petitioner again approached this court vide CWP No.24193 of 2013. For, during the pendency of the said petition, representation submitted by the petitioner-Association was rejected vide order dated 17.12.2013, the same was dismissed

as withdrawn with liberty to assail the said order. It appears that prior to the institution of this petition, petitioner had even approached the Hon'ble Supreme Court under Article 32 of the Constitution of India, but vide order dated 25.04.2014 (Annexure P4), the petitioner was permitted to withdraw the petition with a liberty to approach this court for redressal of its grievance. That is how, the petitioner is before this court.

It is maintained that the colony is in existence since 1992-93. Even, most of jhuggi dwellers have been issued ration cards. And, ration depots duly approved by the Department of Food and Supply are in operation in the area and catering to the needs of the occupants. Most of the residents of the colony are enrolled as voters, for their names appear in the voter's list of the concerned area and they have been provided voter identity cards issued by Election Commission of India. Not just that, few of the occupants have even been issued electricity connections. Further, surveys were also conducted by the Census Department, Government of India, in the year 2010 as also in 2011-12. Pursuant to the directions issued by the Division Bench of this court in CWP No.11637 of 1996 titled "Azad Bharat Colony & Others v. State of Haryana & Others, HUDA had formulated a rehabilitation scheme to provide accommodation to persons in illegal occupation and, therefore, petitioners too were entitled to be rehabilitated. Petitioners in other writ petition i.e. CWP-25576-2015, also purport to be the occupants of the colony and members of the petitioner-Association; Khori Gaon Colony Kalyan Samiti.

Learned senior counsel for the petitioner submits that the matter in hand is squarely covered by a decision rendered by the Division Bench of this court in *Azad Bharat Colony & Others v. State of Haryana & Others* (CWP-11637-1996). For, in identical circumstances, the petitions preferred by the Jhuggi dwellers, who were in unauthorized occupation of Government land in certain colonies in Faridabad and Panchkula, were allowed and directions were issued to rehabilitate them subject to fulfillment of certain conditions set out in the order. And, during the pendency of an appeal before the Hon'ble Supreme Court, against the said decision, HUDA framed a rehabilitation scheme to provide alternative accommodation to unauthorized occupants of the Government land, in terms of the decision dated 19.04.1999. Finally, he submits that the order being assailed i.e. 17.12.2013 (Annexure P3) is palpably erroneous, for there was hardly any basis for the authorities to record a finding that the occupants of the colony had indeed encroached upon the land in question only in the year 2010 and thus were not eligible in terms of the policy.

Per contra, learned counsel for respondents No.1 & 2 submits that concededly the land in question is owned by the Department of Tourism and the petitioners have no right, title or interest therein. He submits that the petitioners had trespassed into the Government land and had caused encroachments. And in any event, in compliance of the order passed by this court, dated 11.03.2013, office bearer of the Association were afforded an opportunity of hearing, but as they were found to have caused

encroachments only in the year 2010, they were not eligible to seek rehabilitation in terms of Clause (iii) of the policy. For, it postulates that an inhabitant has to be in occupation of the Government/Government agency land as on 01.04.2003.

We have heard learned counsel for the parties and perused the paper book.

In terms of the order dated 11.03.2013 (Annexure P1), passed by this court, authorities purport to have considered the claim of the petitioner, in terms of the existing policy. And, for the occupants were not found eligible, vide order being assailed dated 17.12.2013 (Annexure P3), their claims were rejected. The conclusion arrived at reads thus:

“It is pertinent to mention here that as per the policy of HUDA dated 10.02.2010 (result of CWP No.11637 of 1996 – Azad Bharat Colony & Others Vs. State of Haryana – got finality by the Hon’ble Supreme Court of India on 03.04.2008), low cost dwelling units to those encroachers on government land in various urban estates in the State of Haryana can be allocated to the following beneficiaries:

- (i) First preference for the allotment of low cost dwelling units to the petitioners in CWP No. 11637 of 1996 who are un-authorizedly occupying the land of HUDA for the last more than 5 years as on 19.04.1999 i.e. the date of order of the Hon’ble Punjab & Haryana High Court.**
- (ii) Second preference may be given to those inhabitants who are occupying land of HUDA for the last more than 5 years as on 03.04.2008 (the case got the finality by the Hon’ble Supreme Court of India on 03.04.2008.**

(iii) Third preference may be given to those inhabitants who are occupying un-authorisedly the Govt./ Govt. Agency land as on 01.04.2003.

As is evident from the above, in the case of government land not belonging to HUDA, preference is to be given to those inhabitants who have been unauthorisedly occupying such land as on 01.04.2003.

In the present case, petitioners first encroached upon this land of Tourism Department in the year 2010 which is established by the fact that the Tourist Officer of the Tourism Department who visited the site on 21.04.2010 reported that some encroachment had taken place on a part of tourism land and he wrote to the Deputy General Manager, Haryana Tourism Corporation, Hotel Rajhans, Surajkund on 14.05.2010 requesting that this land may be got demarcated by revenue officials and a boundary wall constructed to save this land from encroachments.

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During the personal hearing granted by Director General Tourism on 15.10.2013 and the undersigned on December 16, 2013 (in compliance of the directions of the Hon'ble High Court dated 11.03.2013), the petitioners have not been able to produce any evidence of their ownership of this land. On the contrary, they have admitted before the undersigned that they have encroached upon land belonging to the Tourism Department knowing fully well that this land belonged to the government.

As has been mentioned earlier, the policy of HUDA dated 10.02.2010 provides for providing low cost dwelling units to those inhabitants/occupants who have unauthorisedly occupied government/ government agency on 01.04.2003 whereas in the present case, it has been established beyond doubt that the petitioners started encroaching upon land belonging to the Tourism Department sometime in the year 2010 and therefore, they are not entitled for any rehabilitation whatsoever

under this policy. In any case, the department of Tourism, Haryana is mandated to develop tourist resorts and to promote tourism and it has no policy of allocating any houses/plots to such persons who unlawfully encroach upon tourism land.

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The above mentioned facts reveal and establish beyond doubt that the petitioners have admittedly encroached and squatted upon the land belonging to the Tourism Department since 2010 onwards and they have not been able to produce any documentary evidence to establish that this land belongs to them. On the contrary, they have admitted before the undersigned during the personal hearing on December 16, 2013 that they have illegally and unauthorisedly squatted and encroached upon tourism land.”

Ex facie, the short question that was required to be determined by the authorities was; whether the members of the petitioner-Association, who purport to be in occupation of certain portions of the land, were indeed in possession since 01.04.2003.

In terms of Clause (iii) of the policy only those inhabitants were entitled for rehabilitation, who had unauthorizedly occupied the Government land as on 01.04.2003, whereas the petitioners were found to have encroached the site only in the year 2010 and thus were not eligible.

A bare analysis of the order that has been impugned, reveals that findings recorded by the authorities as regards encroachment or possession of the occupants upon the Government land since 2010, are per se perverse and cryptic. A reference to the report dated 14.05.2010, submitted by the Tourist Officer of the Tourism Department, who purports to have visited

the site on 21.04.2010, was hardly of any consequence, for he never determined as to for how long the occupants were in possession. He merely intimated the authorities of the encroachments that had been caused. And suggested to have the site demarcated and erect a boundary wall to save it from further encroachments. The emphasis laid by the authorities that the petitioners had failed to prove their ownership or title over the site was completely out of context, for concededly the land was/is owned by the Department of Tourism and the petitioners were/are the unauthorized occupants thereof. Apparently, the exercise that purports to have been undertaken to determine the length of possession of the occupants and consequently their eligibilities in terms of Clause (iii) of the policy, was/is a farce. Petitioner had submitted a representation dated 05.04.2013, in terms of the order, rendered by the Division Bench, dated 11.03.2013 (Annexure P1). But it yielded no result, except that a few representatives of the petitioner-Association were once called for a hearing on 15.11.2013 by the Director Tourism. And, it was only after the petitioner again approached this court, being aggrieved of an inaction by the authorities, vide CWP No.24193 of 2013, respondents caused appearance on 02.12.2013 and passed the order dated 17.12.2013 (Annexure P3), rejecting the claim of the petitioner, for the matter was listed on 21.12.2013 before this court. That being so, an opportunity of hearing that was alleged to have been afforded by respondent No.1 to the office bearers of the Association on 16.12.2013, a day prior to the passing of the order

under challenge, was also of no consequence. In any event, all the occupants were required to be heard separately and given an opportunity to produce the requisite material in support of their claims, to determine their eligibility, in terms of Clause (iii) of the Scheme. Notwithstanding that a hearing was afforded to a few of the representatives of the Association. Nothing is brought on record, least any cogent or credible material, which could show that the members of the petitioner-Association had indeed trespassed or unauthorizedly occupied the Government land only in the year 2010 for the first time. That being so, we are impelled to set aside the order dated 17.12.2013 (Annexure P3) and remit the matter for re-consideration.

Accordingly, the order dated 17.12.2013 (Annexure P3) is set aside and the matter is remitted to respondent No.1 for re-consideration of the claim of the members of the petitioner Association, whose particulars and requisite details are set out in the list of members (Annexure P7). Each of the members shall be afforded an opportunity of hearing and their claims shall be decided individually. Respondents shall formulate a schedule in this regard and notify the same to all the members. However, if any of the members would fail to adhere to the said schedule, their claim shall be deemed to have been rejected. Entire exercise shall be completed within a period of three months from today. However, we must clarify that vide this order we have neither determined the eligibility of any of those members nor their entitlement for allotment of alternate sites for rehabilitation. The order of status

quo granted by this court on 13.10.2014, which is in operation, shall continue to operate for a period of two weeks after the authorities pronounced its decision.

Petitions are disposed of in the above terms.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

25.04.2016
Rajan