

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

1. CWP No.6684 of 2014
Date of decision: 04.04.2016
- Santosh Kumari ... Petitioner
- Versus
- State of Haryana and others ... Respondents
2. CWP No.21778 of 2014
- Naresh Kumar ... Petitioner
- Versus
- State of Haryana and others ... Respondents
3. CWP No.10510 of 2014
- Ashutosh Kumar Gupta ... Petitioner
- Versus
- State of Haryana and others ... Respondents
4. CWP No.10161 of 2014
- Usha Gupta ... Petitioner
- Versus
- State of Haryana and others ... Respondents
5. CWP No.15628 of 2015
- Sucha Singh ... Petitioner
- Versus
- Haryana Urban Development Authority and another ... Respondents
6. CWP No.19657 of 2015
- Shamsher Singh and others ... Petitioners
- Versus
- State of Haryana and others ... Respondents

7. CWP No.23348 of 2013
Umed Singh ... Petitioner
Versus
Haryana Urban Development Authority and others ... Respondents
8. CWP No.175 of 2014
Balwan Singh Saini ... Petitioner
Versus
Haryana Urban Development Authority and others ... Respondents
9. CWP No.26012 of 2013
Rajinder Singh ... Petitioner
Versus
State of Haryana and others ... Respondents
10. CWP No.11074 of 2014
Sandhya ... Petitioner
Versus
State of Haryana and others ... Respondents
11. CWP No.17243 of 2014
Rajinder Singh and others ... Petitioners
Versus
State of Haryana and others ... Respondents
12. CWP No.17997 of 2013(O&M)
Kamla ... Petitioner
Versus
State of Haryana and others ... Respondents

13. CWP No.1345 of 2015
Hari Kishan ... Petitioner
Versus
Haryana Urban Development Authority and others ... Respondents
14. CWP No.9758 of 2015
Amarjeet Kaur ... Petitioner
Versus
Haryana Urban Development Authority and others ... Respondents
15. CWP No.22962 of 2014
Hartek Singh ... Petitioner
Versus
Haryana Urban Development Authority and others ... Respondents
16. CWP No.22963 of 2014
Harnek Singh ... Petitioner
Versus
Haryana Urban Development Authority and others ... Respondents
17. CWP No.22964 of 2014
Gurmeet Kaur ... Petitioner
Versus
Haryana Urban Development Authority and others ... Respondents
18. CWP No.22965 of 2014
Gurjant Singh ... Petitioner
Versus
Haryana Urban Development Authority and others ... Respondents

19. CWP No.22966 of 2014
Jaspal Singh ... Petitioner
Versus
Haryana Urban Development Authority and others ... Respondents
20. CWP No.22967 of 2014
Gurcharan Singh ... Petitioner
Versus
Haryana Urban Development Authority and others ... Respondents
21. CWP No.22584 of 2014
Smt. Bala Jindal ... Petitioner
Versus
Haryana Urban Development Authority and others ... Respondents
22. CWP No.14050 of 2015
Balbir Singh ... Petitioner
Versus
Haryana Urban Development Authority and others ... Respondents
23. CWP No.8281 of 2015
Manjeet Singh and others ... Petitioners
Versus
State of Haryana and others ... Respondents
24. CWP No.10288 of 2013
Vishav Pal Singh ... Petitioner
Versus
Haryana Urban Development Authority and others ... Respondents

25. CWP No.5842 of 2016
Mulakh Raj ... Petitioner
Versus
Haryana Urban Development Authority and others ... Respondents
26. CWP No.4509 of 2016
Ramesh Kumar ... Petitioner
Versus
State of Haryana and others ... Respondents
27. CWP No.5416 of 2016
Saroj Bala ... Petitioner
Versus
State of Haryana and others ... Respondents
28. CWP No.5420 of 2016
Surender Kumar and another ... Petitioners
Versus
State of Haryana and others ... Respondents
29. CWP No.5499 of 2016
Sushil Gupta ... Petitioner
Versus
State of Haryana and others ... Respondents
30. CWP No.5449 of 2016
Madan Lal ... Petitioner
Versus
State of Haryana and others ... Respondents

31. CWP No.5468 of 2016
 Deepak Goyal and another ... Petitioners
 Versus
 State of Haryana and others ... Respondents
32. CWP No.22961 of 2014(O&M)
 Surlekh Singh ... Petitioner
 Versus
 Haryana Urban Development Authority and others ... Respondents
33. CWP No.2376 of 2014(O&M)
 Rohan Kapoor and others ... Petitioners
 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. Puneet Bali, Senior Advocate with Mr. Ranjit Saini, Mr. Ashish Gupta, Ms. Ramandeep Kaur, Advocate for Mr. Vikram Singh, Mr. Wazir Singh, Mr. Amit Aggarwal, Mr. GC Shahpuri, Ms. Harpriya Khaneka, Mr. Ankur Malik, Ms. Anita, Mr. Anil Dutt, Mr. SP Chahar, Mr. BS Giri, Mr. Ashok Kumar Khubaar, Advocates, for the petitioners.
 Mr. BR Mahajan, Advocate General, Haryana with Mr. Rahul Dev Singh, DAG, Haryana & Mr. Deepak Balyan, Addl. AG, Haryana.
 Mr. Arun Walia, Senior Advocate with Mr. Rohit Mittal, Advocate for HUDA in CWP No.175 of 2014.
 Ms. Geeta Sharma, Advocate for HUDA in CWP No.17243 of 2014.
 Mr. Ravi Malik, Advocate for Mr. PS Chauhan, Advocate for respondent No.1.
 Mr. Pawan Kumar Longia, Advocate for respondents No.2 to 4 in CWP No.10510 of 2014.
 Mr. Sandeep Singal, Advocate for Mr. JP Bhatt, Advocate for HUDA in CWP Nos.26012 and 17997 of 2013.
 Mr. Sumit Singh, Advocate for Mr. Deepak Manchanda, Advocate for HUDA in CWP No.9758 of 2015.

Mr. Lokesh Sinhal, Advocate for HUDA
 in CWP No.19657 of 2015.
 Mr. Suvir Sehgal, Advocate
 Mr. Deepak Sabherwal, Advocate for HUDA in CWP
 Nos.17997 of 2013; 2376 & 11074 of 2014.
 Mr. RKS Brar, Advocate for respondents No.2 & 3
 in CWP No.4509 of 2016.

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.

Petitioners, in this bunch of 33 petitions, happened to be the co-owners, whose land holdings were acquired by the State Government, vide different or pursuant to the same acquisition proceedings, as the case may be. Their grievance is common; though the petitioners being oustees were entitled for allotment of plots/sites in terms of the Rehabilitation and Resettlement Schemes, but their claims were rejected, for they were co-owners in a joint Khata and were, thus, not entitled to seek allotment independently in their respective names. The issue is free, in the wake of the decisions rendered by this court in the recent past, from any complexity; **Jarnail Singh and others v. State of Punjab and others**, 2011 AIR (Punjab) 58; **Haryana Urban Development Authority & others v. Sandeep & others**, dated 25.04.2012, LPA-2096-2011; and **Bhagwan Singh & others v. State of Haryana and others**, dated,26.04.2012, CWP-10941-2010.

In *Jarnail Singh and others (supra)*, which is a decision rendered by a Full Bench, the grievance of the co-owners, whose land was acquired, was similar; that all of them were entitled to

allotment of plots/sites individually, and in their own right. Thus, restriction of allotment of one plot to all the co-owners was arbitrary and irrational. And on a consideration of the matter, it was concluded:

“20. We find that the restrictions of allotment of one plot to a joint khata holder is unreasonable and arbitrary as each of the land owner is entitled to rehabilitation in his individual right. The rights of co-owners have been delineated in the judgment of this Court in Sant Ram Nagina Ram's and reiterated by a Five Judges Bench judgment in Ram Chander's cases (supra). A co-owner is owner of land as much as his other co-owners are. Mere fact that two or more persons have not sought partition of their holding and/or are enjoying the joint possession, does not affect the title of each of the co-owners. The co-owners are deprived of their title and possession by way of acquisition of land. Therefore, there is no reasonable explanation as to why a co-owner has been made ineligible, except to the extent that number of co-owners would be so large, which will make the process of acquisition itself futile.

21. Thus, we are of the opinion that the Clause restricting the allotment of one plot to all co-owners is irrational, arbitrary and with no reasonable nexus with the objective to be achieved and thus, not sustainable. Therefore, we hold that Clause 6 (V) of the Policy dated 16.9.1994 restricting allotment of one plot to all the co-sharers, is illegal and void.”

Whereas, in *Sandeep & others (supra)*, the Division Bench determined the rights of the oustees for allotment of plots/sites, in terms of the policies formulated by HUDA as also the State Government from time to time. And, concluded:

“Thus, the present appeal as well as the other connected matters are disposed of with the following directions, in addition to the decision on the questions of law discussed above.

- (i) That date of notification under Section 4 of the Land Acquisition Act, 1894 is relevant to determine the eligibility of a land-owner for allotment of a residential plot, even if the acquisition is for the purposes of commercial, industrial or institutional;**
- (ii) That the entitlement of the size of the plot and the procedure for allotment shall be as on the date of allotment in pursuance of an advertisement issued inviting application from the oustees;**
- (iii) That the HUDA or such other authority can reserve plots up to 50% of the total plots available for all reserved categories including that of oustees. As to what extent there would be reservation for the oustees, is required to be decided by the State Government and/or by HUDA or any other authority, who is entitled to acquire land;**
- (iv) That the oustees are entitled to apply for allotment of plot along-with earnest money in pursuance of public advertisement issued may be inviting applications from the general public and the oustees through one advertisement. If an oustee is not successful, he/she can apply again and again till such time, the plots are available for the oustees in the sector for which land was acquired for residential/commercial purposes or in the adjoining sector, if the land acquired was for institutional and industrial purposes etc. The plots to the oustees shall be allotted only by public advertisement and not on the basis of any application submitted by an oustee;**

- (v) That the price to be charged from an allottee shall be the price mentioned in the public advertisement in pursuance of which, the plot is allotted and not when the sector is floated for sale for the first time;
- (vi) That the State Government or the acquiring authority shall not advertise any residential plot for sale without conducting an exercise in respect of plots ear-marked for reserved categories and after identification of the plots available for the oustees in each sector. Thereafter, the State Government or the acquiring authority shall publish an advertisement inviting applications from such oustees to apply for allotment of plots in accordance with law: and
- (vii) If in any sector, more than 50% plots have been allotted by way of reservation including to the oustees, then such allotment shall not be cancelled or reviewed in view of the judgment of this court.”

And, in *Bhagwan Singh & others (supra)*, the question that once again engaged the attention of the Division Bench, this time, in matters pertaining to the State of Haryana, was: whether a co-owner was entitled for allotment of a separate plot/site, though in terms of the State policies all the co-owners could only be allotted one plot jointly. In reference to the decision rendered by the Full Bench in *Jarnail Singh and others (supra)*, it was concluded:

“In view of the judgment of Full Bench in Jarnail Singh's case (supra) dealing with the rights of the co-sharers, each of the cosharer is entitled to a plot of a size keeping in view his land holding. The rights of the oustees for allotment of a plot has been discussed by this Court in LPA No.2096 of 2011 titled “Haryana Urban

**Development Authority & others Vs. Sandeep & others”
decided on 25.04.2012.**

Consequently, the present petition as well as other connected petitions stand disposed of with a direction to the respondents to consider the claim of each of the co-sharer for allotment of a plot keeping in view his holding and in accordance with the principles of law laid down in Sandeep's case (supra).”

Concededly, the decisions rendered by this court in all the three matters, referred to above, have since attained finality. For, the judgment rendered by the Full Bench in *Jarnail Singh and others (supra)* was not assailed any further, and in the other two matters, the Special Leave Petitions preferred by HUDA were dismissed by the Hon'ble Supreme Court.

What we deduce from the ratio of law laid down in *Jarnail Singh's case (supra)* is that a co-owner is as good a landowner as an individual who is the sole owner of his holding. A co-owner holds an absolute title or ownership over a land, in proportion to his share, in a joint Khata. Therefore, it makes no difference in law that a land that was acquired formed part of the joint holding or not. Just because the land that was acquired was joint or un-partitioned would not dilute the title of a co-owner a bit. Rather, what is to be borne in mind is that in either of the situation, a landowner loses his land and is termed as oustee. And it is precisely for that reason he is not only awarded compensation, in proportion to his holding, but is also entitled for allotment of a plot/site in terms of the policies/schemes of the Government as a rehabilitation measure. A co-owner always has an option to seek

partition of the joint holding, for a joint Khata is for the mutual convenience and suitability of the co-owners. Therefore, even a co-owner shall be entitled to seek allotment of a site/plot individually and independently, in proportion to his/her share in a joint Khata, provided he/she meets the eligibility conditions/criteria set out in the policy/scheme in operation at the relevant time.

However, the principle of law appears to have been misconstrued by the authorities. For, to illustrate, in CWP No.6684 of 2014, petitioner owned 13/20th share in a land measuring 1 kanal, comprised in rectangle and killa No.42//12/2/2, and the balance 7/20th share was owned by another co-owner i.e. Rajbir son of Bhup Singh. Rajbir also owned another piece of land measuring 7 kanals 11 marlas, comprised in khasra No.43/10, which was released by the Government from acquisition. And surprisingly, claim of the petitioner was rejected, vide order dated 13.05.2013 (Annexure P10), on the ground, for the land owned by her co-owner, though comprised in different khewat, was released from acquisition, therefore, petitioner was not entitled to seek allotment.

Ex facie, the order is palpably erroneous. Need we say; the fact that land of a co-owner was released, even if it was a part of the same khewat, would neither effect nor have any bearing upon the rights and entitlement of the other co-owner to seek allotment as an oustee.

In fact, quite a few matters in this bunch were adjourned *sine die* to await the decision of the Hon'ble Supreme Court in Special Leave Petition preferred by HUDA against a decision rendered by the Division Bench in *Bhagwan Singh's case (supra)*. And now when the SLP has been dismissed, learned counsel for the parties, having argued the matter at some length, have reached a consensus that in the wake of the decisions rendered by this court, claims of all the petitioners are required to be reconsidered. Learned Advocate General, fairly submits that claim of each of the petitioners/co-owners/oustees shall be re-examined, notwithstanding the orders that have been assailed in these writ petitions rejecting their respective claims.

That being so, the orders that have been assailed in these writ petitions are quashed. Respondents are directed to re-consider the claim of each of the petitioners, strictly in terms of the decisions, referred to above, and the relevant policies in operation. We were/are informed that pursuant to the interim orders passed by this court, in certain matters in this bunch, plots/sites were reserved for the petitioners in those cases. If that is so, those sites/plots shall be kept reserved till formal orders are passed and communicated to the concerned landowners. However, respondents shall be free to allot either the reserved site or even a different site, in the event the petitioners, in those cases, are found entitled for allotment. We also consider it necessary to observe that vide this order we have neither determined the eligibility nor entitlement of any of the petitioners for allotment of a plot/site, for

all these questions shall now have to be determined by the concerned authorities on the basis of the material on record.

The entire exercise shall be completed within a period of four months from today. Needless to assert that the authorities shall pass comprehensive order assigning reasons in support of the decision arrived at.

The writ petitions are accordingly disposed of in the above terms.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

04.04.2016
Rajan