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

CWP-10123-2004

Date of decision : 16.03.2017

Ram Singh

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Dinesh Ghai, Advocate with
Mr. Hitesh Ghai, Advocate
for the petitioner.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned order dated 19.09.2003 (Annexure P-5) passed by the Commissioner-cum-Secretary, Rehabilitation Department, Haryana and order dated 08.11.2002 (Annexure P-3) rendered by the Chief Settlement Commissioner, Haryana on the premise that an offer of transfer of plot bearing No.2L/59/BP measuring 149 sq. yds. was made to the petitioner vide letter dated 18.10.1988 (Annexure P-1).

Mr. Dinesh Ghai and Mr. Hitesh Ghai, learned counsel appearing on behalf of the petitioner submits that the aforementioned letter of offer was given on the basis of the possession of the land in question under the instructions of the Government issued vide notification dated 11.07.1988. The condition of the aforementioned instructions is that a

person, who is in unauthorized possession and had raised the construction on or before 01.01.1982, was eligible for the allotment. The entire exercise regarding the inspection of the premises was done and it is only as a consequential effect that the letter of offer was given. The petitioner had deposited 25 % of the amount i.e. ₹ 11,175/- and the documentary evidence qua the same, regarding ration card, electric connection and various other documents i.e. photographs of construction had been submitted. In fact the substantial construction already existed before 01.01.1982. Even during the pendency of the matter before respondent No.1/Commissioner-cum-Secretary, Rehabilitation Department, Haryana, a survey was got conducted on 16.02.1994, wherein the report as extracted in para 4 of the writ petition was given. The relevant portion of the same reads as under:-

"The site has been inspected by the Committee. There 2 rooms, kitchen and latrin, bathroom and one shed buffalo. First floor has also been constructed. The proof of possession is inadequate. The area of private personal sale has not been included in the offer letter. Party has been asked to submit its own site plan as per actual possession included gali along with proof of construction possession"

The aforementioned report has not been denied in the written statement. A *suo motu* reference was initiated by respondent No.3 and vide order dated 08.11.2002, the allotment was cancelled. The petitioner preferred a revision petition under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short 'the 1954 Act') and now repealed, as it was in vogue, against the impugned order and the same had also been dismissed vide impugned order. In this regard, he has drawn the attention of this Court to the impugned order rendered by the respondent

No.2, wherein, there a reference to the inspection having been conducted on 11.06.1997 which reads as under:-

"Plot No.2-L/59 (Bungalow Plot NIT-Faridabad)

The plot/building was visited again and the local inquiry was also made. It was also made. It was ascertained from the local inquiry as well as the appearance of the structure and the age of the building appeared about 15 years old only. No record in support of the construction period/age of the building was produced by Shri Jaman Dass, occupant of the building.

Plot No.2K/46-C

This site was also visited again and efforts were made to ascertain the age of the building from the local inquiry. This building also appeared about 15 years old. It was also observed that some Labourer was residing in that shed which has possibly been constructed for storing some building material. No record regarding the exact construction period/age of the building was made available by the person who claimed ownership of this plot."

He further submits that the inspection reveals that the construction was in existence 15 years ago i.e. much before cut off date i.e. 01.01.1982, thus, urges this Court that the impugned orders are not sustainable in the eyes of law being arbitrary, perverse and without jurisdiction.

Per contra, Mr. Sandeep Singh Mann, Sr. DAG, Haryana submits that the petitioner had to establish not only unauthorized possession, but the continuous possession, much less, construction. Having failed to do so, the impugned orders, under challenge, are perfectly legal and justified. Both the aforementioned Acts had been repealed, but there is no repeal in saving clause, therefore, the petition does not lie. A new policy

of 2002 has also been promulgated and therefore, the case of the petitioner would not be covered under the old policy, thus, urges this Court for dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and merit in the submissions of Mr. Dinesh Ghai, for, a cumulative reading of the inspection, as extracted above, would lead to an irresistible conclusion that construction was in existence 15 years ago, when the inspection was done in 1992, much less, 1994. Ration card and bank account of the same very premises have also been proved on record. The core question which was to be noticed and seen by the authorities, was that the offer of allotment could not have done, had there not been any pre-survey, in essence, before issuance of the allotment letter, the positive presumption in favour of the petitioner was liable to be drawn as no offer of allotment can be done in the absence of any inspection or survey being conducted by the respondent(s). The *suo motu* action, in my view, was wholly without jurisdiction and would not have been raked up.

The State would have been justified in cancelling the allotment, had the survey report been against the petitioner. It has been found that inspection was done, the report should not have been read *in* manner by drawing a presumption against the petitioner and in favour of the State/respondent(s).

There is no force in the submissions of Mr. Sandeep Singh Mann, Sr. DAG, Haryana regarding promulgation of the new policy as the case of the petitioner was considered under the old policy and even the allotment letter was issued, thus, the petitioner had a subsisting right, which

cannot be taken away on account of promulgation of the new policy.

The word of "construction possession" actually has been wrongly mentioned in the report of 1994, whereas it should be "continuous possession". No doubt that the initial offer of allotment was provisional, but the same could not have been done without any pre-survey.

Keeping in view the aforementioned facts, the findings of the authorities below, thus, in my view are not justified, much less, not sustainable in the eyes of law and resultantly, the same are hereby set aside. The allotment in favour of the petitioner stands restored. The present writ petition stands allowed, in the aforesaid observations.

16.03.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No