

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

1. CWP No.10803 of 2006 (O&M)
Date of decision : 16.01.2017

Joginder Singh

...Petitioner

Versus

State of Punjab and others

..Respondents

2. CWP No.10804 of 2006 (O&M)
Date of decision : 16.01.2017

Baljinder Singh and others

...Petitioners

Versus

State of Punjab and others

..Respondents

3. CWP No.10815 of 2006 (O&M)
Date of decision : 16.01.2017

Sukhjinder Singh (deceased through LRs)

...Petitioner

Versus

State of Punjab and others

..Respondents

4. CWP No.10816 of 2006 (O&M)
Date of decision : 16.01.2017

Nasib Singh and others (deceased through LRs)

...Petitioners

Versus

State of Punjab and others

..Respondents

5.

CWP No.23832 of 2013 (O&M)
Date of decision : 16.01.2017

Charanjit Singh and others

...Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. G.S. Punia, Sr. Advocate with
Mr. Prabhinder Singh Punia, Advocate for the petitioners.
(In CWP Nos.10803, 10804, 10815 and 10816 of 2006)

Mr. M.L. Saini, Advocate for the petitioners
(In CWP No.23832 of 2013)

Mr. Yatinder Sharma, Addl. A.G. Punjab.

AMIT RAWAL, J. (Oral)

On request of learned counsel for the parties, CWP No.10816 of 2006, which is shown at Regular Sr. No.721 of this Court, is taken on Board today. Same is also hereby decided.

This order of mine shall dispose of aforementioned five writ petitions for issuance of appropriate writ, order or directions especially in

the nature of mandamus directing the State of Punjab through Secretary to Government of Punjab, Revenue Department, Civil Secretariat, Chandigarh, The Collector-cum-Deputy Commissioner, Ludhiana, The Sub Divisional Magistrate (Executive)-Cum-Assistant Collector, Payal, District Ludhiana and The Assistant Collector, Grade II, Tehsildar, Payal, District Ludhiana to grant proprietary rights to the petitioner in view of the policy decisions (Annexure P-1) dated 26.06.1956, (Annexure P-2) dated 05.12.1964 read with the decision of the Government of Punjab dated 09.05.1997 (Annexure P-5) and as well as in view of the policy decision of the Government dated 17.04.1997 (Annexure P-4) and further memo dated 21.12.2001 (Annexure P-7) and writ in the nature of certiorari for quashing of the order dated 22.11.2005 (Annexure P-24) by the Sub Divisional Magistrate and dated 14.03.2006 (Annexure P-27) of the Deputy Commissioner, Ludhiana.

Mr. G.S. Punia, Sr. Advocate with Mr. Prabhinder Singh Punia, learned counsel appearing on behalf of petitioners submits that aforementioned policy was promulgated by the Government to grant benefit to the persons who had been in occupation of the land as tenants prior to the partition. The aforementioned policies were adhered to by the State in certain other cases, in essence, State had been following pick and choose policy and in this regard has drawn the attention of this Court to the judgment and decree dated 19.10.1972 (Annexure P-65) attached with the miscellaneous application bearing No.1831 of 2015 and only letter dated 26.06.1956 had allegedly been admitted and letter dated 05.12.1964 (Annexure P-2) had been discussed.

He submits that representation for allotment of the land in this regard was made but the same was ultimately rejected vide Annexure P-24 and P-27. He has also drawn the attention of this Court to the order dated 28.04.2015 passed by this Court, whereby State was directed to file specific affidavit in this regard but submits that affidavit dated 29.07.2016 which has been submitted by the Deputy Secretary to Government of Punjab, Department of Revenue, Rehabilitation and Disaster Management is conspicuously silent regarding observation/directions of this Court. Directions contained in the order aforementioned reads thus:-

“The petitioner(s) claims themselves to be occupant tenant (s) of land in dispute, being evacuee property since soon after partition. Petitioner (s) claims proprietary rights and ownership rights in terms of Policy dated 26.6.1956 (P-1) and Policy dated 5.12.1964 (P-2) specifically framed relating to village Rajgarh. Petitioner(s) case has been finally rejected vide order dated 14.3.2006 (P-27) passed by Deputy Commissioner-cum- Collector, Ludhiana solely on the basis that the authenticity of the Policies P-1 & P-2 could not be ascertained by either the department or the petitioner.

The stand of the respondent State in the written statement is that the land in dispute are Nazool Lands and cannot be allotted to the petitioner(s) in view of the provisions of Nazool Rules 1956.

Learned Counsel for the petitioner(s) has pointed out by referring to Annexures P-10 to P-12 and P-41 to 44 respectively that similar lands in occupation of similarly situated persons of village Rajgarh were allotted in terms of Policies P-1 & P-2 respectively or under the Nazool

Rules. He thus prays for similar treatment.

At the time of hearing today by way of CM No.1831 of 2015 in CWP No.10803 of 2006 learned Counsel for the petitioner(s) has placed on record the judgment and decrees dated 31.5.1971 as Annexure P-64 and the appellate decree dated 19.10.1972 upholding the same as Annexure P-65 which relates to a similar claim by similarly situated residents of village Rajgarh wherein the stand of the respondent-State admitting the existence and authenticity of the Policies Annexure P-1 & P-2 has been decided. He thus submits that the very basis of passing the impugned order is thus removed.

At this stage learned Counsel for the State, who has been furnished with copy of aforesaid CM along with Annexures P-64 and 65 prays only for a weeks time to seek necessary instructions in this regard.

List on 26.5.2015.

Photocopy of this order be placed on the files of connected aforesaid cases.”

He further submits that the petitioners would not be having any right under the Punjab Tenancy Act 1887 as cause of action only accrued owing to the promulgation of the notification/policy decisions indicated above. They have also drawn the attention of this Court to the Sanad Annexures P-41 to P-44 to contend that State had transferred the land in favour of the other similar situated person i.e. resident of village, in essence, nature of the land is *nazool* and, therefore, in view of the aforementioned Annexures, there cannot be any bar of transferring the land in favour of the petitioners.

Mr. Yatinder Sharma, Addl. A.G. Punjab submits that decision

rendered by the authorities below is perfectly legal and justified, for, existence of the policy as reflected in the written statement and the affidavit is that the authenticity of the policy is under doubt, much less, in existence. He submits that in the absence of the same, even photocopies of the policy could not be relied upon. The Deputy Commissioner in the order indicated the factum of non-existence of the aforementioned policies and, therefore, claim was rightly rejected.

I have heard learned counsel for the parties and appraised the paper book.

Without delving upon merits and demerits of the case, as it would seriously prejudice the right of the petitioners, I deem it appropriate that petitioners were required to approach Civil Court for claiming the aforementioned declaration as has been done in the judgment and decree (Annexures P-64 and 65). All the documents i.e. the policies are required to be proved in accordance with law i.e. in pursuance to the provisions of Order 11 of the Code of Civil Procedure and Indian Evidence Act, etc. Until and unless those documents are not proved and established by way of direct and cogent evidence, grievance of the petitioners cannot be redressed.

Writ Court cannot go into the aforementioned intricate questions of fact as owing to the stand of the respondent-State, thus, I deem it appropriate that petitioners should approach the Civil Court. In case they approach Civil Court, period spent in this Court shall deemed to be condoned as per the provision of Section 14 of the Limitation Act.

It has been submitted by Mr. M.L. Saini, Advocate for the

petitioners that petitioners are in possession. Be that as it may. No documentary evidence has been placed on record with regard to the possession. Status-quo qua the possession as it exists today shall be maintained. Liberty is granted to claim the interim maintenance before the Civil Court.

All the aforementioned writ petitions are disposed of in the aforementioned terms.

16.01.2017

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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No