

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

1. CWP No.26648 of 2014 (O&M)
Date of decision : 03.05.2017

Jaswant Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

2. CWP No.2184 of 2016
Date of decision : 03.05.2017

Suba Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. M.L. Saggar, Sr. Advocate with
Ms. Armaan Saggar, Advocate for the petitioner(s).

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

Mr. R.D. Bawa, Advocate for the applicant(s)

AMIT RAWAL, J. (Oral)

CM No.2034-CWP of 2016 in CWP No.2184 of 2016

For the reasons stated in the application, which is duly
supported by an affidavit, application is allowed.

Jaswant Kaur (War Widow) of Nahar Singh son of Sh. Anokh Singh, resident of Mohalla Singhpura, Ward No.12, Bassi Pathana, District Fatehgarh Sahib is impleaded as respondent No.4 in the present writ petition.

Main Cases

This order of mine shall dispose of aforementioned two writ petitions.

The petitioners have approached this Court by challenging the order dated 05.11.2013 (Annexure P-6), whereby the claim in pursuance to the policy dated 26.09.2007 (Annexure P-2) promulgated by the State of Punjab with regard to disposal of Surplus Rural Evacuee and Inferior Evacuee Land by transferring on the basis of the continuous cultivating possession to its unauthorised occupants, has been decided.

Mr. M.L. Saggar, learned Senior Advocate assisted by Ms. Armaan Saggar, learned counsel appearing on behalf of petitioner(s) submits that genesis of the impugned order is basically on the basis of letter dated 20.04.2011 (Annexure P-5), whereby both the policies of 26.09.2007 and 03.02.2010, have been interpreted to be invalid in view of judgment rendered by Hon'ble Supreme Court in *Jagpal Singh and others Vs. State of Punjab, 2011 AIR SC 1123*.

He submits that one Piara Singh had also sought the allotment of the land on the basis of 2007 policy and Learned Single Bench and Division Bench in Intra Court Appeal dismissed the aforementioned claim of the petitioner by relying upon the ratio decidendi culled out in Jagpal case (Supra). However, Piara Singh approached Hon'ble Supreme Court in a

Special Leave Petition bearing No.15457 of 2014, whereby Hon'ble Supreme Court while granting the leave, disposed of the SLP which was renumbered as Civil Appeal No.0371 of 2014 by remanding back the matter to the Division Bench of this Court on the premise that arguments of the counsel for the petitioner with regard to the applicability of the Punjab Package Deal Properties (Disposal) Act, 1976 and rules framed thereunder would be applicable or not as case of Jagpal Singh (Supra) pertained to the encroachment of the land belonging to the Gram Sabha/Gram Panchayat i.e. land falling under the Punjab Village Common Land Act, 1961.

During the course of hearing, it has been pointed out that after remand, LPA bearing No.2133 of 2013 has been decided by Division Bench of this Court vide order dated 28.07.2016. The operative part of the same read as under:-

“A perusal of the above would reflect that Section 4 deals with the power of the Government to transfer Package Deal Property in the mode and manner prescribed. Whether the appellants would be entitled to a claim under the 2010 policy would have first to be gone into by the competent authority. The claim of the appellants having been considered under 2007 policy would be no justification to relate it to the claim under 2010 policy under which neither the appellants made a claim nor any authority has considered it at any stage. We dispose of the appeal with liberty to the appellants to raise their claim under 2010 policy, which may be decided by the competent authority in accordance with the law. Our observations would not be construed to confer any legitimacy of the claim to the appellants and the competent authority would evidently be

free to apply the policy, independent of any observation made herein.”

in essence, the appellant in LPA, who are similarly situated to the petitioners have been held entitled to claim the land under 2010 policy i.e. 03.02.2010 (Annexure P-2) (Colly) to be gone to by the competent authority, that would be Tehsildar Sales.

Mr. Saggar, has also brought to the notice of this Court that in many cases, owing to the non-availability of the land, the Government of Punjab has come out with policy of compensating the war widow by fixing the compensation as Rs.5,00,000/- per acre vide notification dated 24.11.2016.

Mr. R.D. Bawa, learned counsel appearing on behalf of newly added respondent i.e. Jaswant Kaur in CWP No.2184 of 2016-petitioner in CWP No.26648 of 2014 submits that case of Jaswant Kaur being War Widow of 1965 war is that she has been allotted a land measuring 10 acres which is in unauthorized occupation of the petitioner and even conveyance deed has been executed. Owing to the status-quo order passed in writ petition titled as Suba Singh and others Vs. State of Punjab and others, the possession could not be delivered.

He further submits that petitioner had an alternative remedy to assail the order dated 05.11.2013 (Annexure P-6) by filing an appeal under Section 8 of 1976 Act. The aforementioned objection of Mr. Bawa, has been rebutted by Mr. Saggar, Sr. Advocate on the ground that since there was misinterpretation of the provision of the Act, alternative remedy could not have been availed particularly when the judgment of Hon'ble Supreme

Court is to be interpreted. Be that as it may, but the fact remains that already on remand by the Hon'ble Supreme Court, LPA aforementioned has been disposed of with direction, *ibid*.

I am of the view that in view of extracted portion of LPA, *ibid*, petitioners being similar situated persons are also entitled to the claim as per 2010 policy (Annexure P-2) (Colly). In case, the petitioner avail the aforementioned remedy within a period of one month from today, the Competent Authority i.e. Tehsildar Sales shall decide the claim of the petitioners in pursuance to the policy dated 03.02.2010 within a period of four months.

Since the adjudication of other writ petition i.e. 2184 of 2016 is also connected, the same is also disposed of with a direction that in case claim of the petitioner is rejected, the authorities below shall endeavour to hand over the possession of the land measuring 10 acres as indicated in the allotment letter/conveyance deed to the petitioner-Jaswant Kaur i.e. within a period of one month.

In view of aforementioned, both writ petitions stand disposed of.

03.05.2017

Pawan

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No