

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

CWP-11133-2018

Date of decision-10.07.2018

Raghavinder Dass and another

...Petitioners

Vs.

Union of India and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Shailendra Sharma, Advocate for the petitioners.

JITENDRA CHAUHAN, J. (Oral)

The petitioner is aggrieved against the proceedings of the compensation committee dated 05.01.2016 (Annexure P-45) whereby after assessing the compensation of the Bungalow No.266/102, the Mall Ambala Cantt (hereinafter referred to as 'bungalow in question'), as Rs.96,18,000/-, the Committee instead of awarding the compensation of the bungalow resumed by the respondents arrived at the conclusion that the petitioners are liable to pay an amount of Rs.89,93,455/- to the Ministry of Defence.

It is the case of the petitioner that the Committee of Compensation/acquisition did not specify as to how and under which laws/rules, the compensation for the forcible acquisition of the bungalow in question had been assessed.

The brief facts of the case necessary for the disposal of this writ petition are that the bungalow in question measuring 1.60 acres was held on old grant terms of General Order issued by the Governor General in Council No.179 dated 12.09.1836. The recorded Holder of Occupancy Rights (HOR)

were Sham Sunder Dass and Smt. Savita Dass. Consequent upon the death of Sham Sunder Dass, Savita Dass became the HOR of the property. Government of India, Ministry of Defence vide notice/order No.1/41/L/L&C/69 dated 21.3.1975-07.04.1975 granted resumption sanction of the bungalow in question. The resumption order was challenged in the Civil Court at Ambala which was eventually decided in favour of Union of India by this Court vide judgment dated 09.05.2011 in RSA No.1199-1983 after a prolonged legal battle since 1975. Accordingly, physical possession of the bungalow in question was taken over by the local Military authority on 13.09.2012. This Court while deciding RSA No.1199-1983, directed the respondent-Union of India to afford an opportunity of hearing to the petitioners at the time of determining the quantum of building resumed. Accordingly, the petitioners were afforded an opportunity of hearing by the Compensation Committee.

The Compensation Committee was re-convened vide Headquarters Punjab, Haryana and Himachal Pradesh (Independent) Sub Area convening order No.1524/2/B.No.102/Q3(L) dated 05.01.2016. Petitioner No.2 attended the proceedings. The Compensation Committee considered the following points:-

- (i) Provision for Re-assessment of authorized superstructure on the resumed bungalow of HOR.
- (ii) Provision of 500 square yard compensation plot on 50 % payment by HOR on prevailing STR rate.
- (iii) Damages in form of Rent for over staying in bungalow No.102 after

the expiry of one month after the notice was issued to vacate I.e.from 07 April 1975 till 13 Sept, 2012 (when the bungalow was physically resumed).

(iv) Penalization for Erection of two unauthorized communication towers in the resumed site without permission of the competent authority.

(v) Penalization for running of unauthorized School in the OGB No.102 without permission of the competent authority.

Before the Compensation Committee, petitioner No.2 took the plea that she had carried out major repairs in the bungalow in question in the year 1967. After taking into consideration the entire record, the Compensation Committee assessed the amount of compensation as Rs.96,18,000/-. As far as second point with regard to the provision of 500 square yard compensation plot on 50% payment by HOR is concerned, the Compensation Committee observed that since petitioner No.2 had violated the very condition of the Government Policy letter dated 02.04.1973 as well as Government's offer letter dated 28.08.1975, she was held not eligible for the alternative plot of 500 square yards. It was held by the Compensation Committee that in the instant case, Government of India vide letter No.12014/9/74/D (Lands) dated 28.08.1975 offer certain concessions to the ex-HOR including an alternative plot of land measuring 500 square yards in case he/she does not dispute Government's title to the land and right of resumption and since the ex-HOR challenged the Government's title on land as well as Government's right to resume the land right up to this Court leading to significant delay in handing over the possession.

The Compensation Committee further found that the petitioner

had erected unauthorized communication towers in the premises and rented out a portion of the estate to M/s Reliance and M/s Viom without obtaining sanction from competent authority. She earned rent from the above towers till the date of physical resumption i.e.12.09.2012. The factum of running of school on the premises by the petitioners on the bungalow in question from 1994 to 2010 has also been established on record. Further, the damages of rent were due from the petitioners as per STR rates for continuing to stay in bungalow in question beyond one month of the date of resumption notice i.e.12.09.2012.

After taking into consideration all the points, Compensation Committee calculated the net compensation as under:-

38. **Value of Compensation-** In view of Para 34, 36 & 37 above, the net compensation thus works out as follows:-

(a)	The value of the building as per the building plan as assessed by Garrison Engineer (South) Ambala Cantt vide their letter No.2014/OGB/46/E2 dated 26.03.2016 (Refer Annexure P-14)	Rs.96,18,000/-
(b)	Damage on account of usage of Government land since resumption till taking over of possession on 13.09.2012 as per the assessment carried out by the Defence Estate Office Ambala Circle (Refer Annexure P-21)	Rs.78,81,455/-
(c)	Penalty for change of purpose of usage by running of Kinder Garten School un-authorizedly and installation of Communication Tower without sanction of the Competent authority as levied by the Cantonment Board Ambala Cantt vide their letter No.ACB/TS/2009/1814 dated 13.08.2009 (Refer Annexure P-22)	Rs.1,07,30,000/-

39. **Net Value of Compensation**

(a)	To be paid to Ex-HOR as per details at para 38 (a)	Rs.96,18,000/-
(b)	To be paid to Ministry of Defence by the Ex-HOR as per details at para 38(b)	Rs.78,81,455/-
(c)	To be paid by the Ex-HOR to Ministry of Defence as per details at para 38(c)	Rs.1,07,30,000/-
(d)	Net amount to be paid by Ex-HOR to Ministry of Defence {39(a)-39(b)+39(c)}	-

It is contended that during the British Rule Governor General used to pass orders in the form of regulation for its Military Officers and troops and exclusively for military boundary pillars for all the three presidencies, namely, Bengal, Bombay and Madras. No Governor General order was ever passed for Punjab province which was under the Lieutenant Governorship 1859. It is further contended that the estate of the petitioners was part of the Kalsia estate which was always an independent estate under the British Rule.

Learned counsel cites “**Javed Sheikh Mustaque Patel Vs. State of Maharashtra and others**”, AIR Bombay 164 to contend that interpretation of the provisions of statute cannot be foundation for interpretation of provision in another statute unless provisions are *pari materia*. It is further contended that the principle of interpretation is either literal and liberal and when there is no ambiguity in the words, the question of intention ought not to be admitted. Learned counsel refers to paragraph 53 of the writ petition to highlight that in Ambala Cantt, the respondents resumed a number of bungalows forcibly but neither the said bungalows have been put to use nor the compensation was assessed and paid to the owners of these bungalows. The delay had occasioned due to the negligence

and misconduct of the respondents and also bias and corrupt attitude of the executive. The petitioners requested the respondents for determining of compensation and allotment of one plot of 500 square yards as per the policy but the respondents did not take any step for one full year and only on 25.07.2013, respondent No.5 sent a letter to petitioner No.2 informing her to attend the proceedings of the Compensation Committee. The Compensation Committee arbitrarily assessed the amount to be paid by the petitioners.

There is no merit in the contention of learned counsel for the petitioner that the Compensation Committee acted arbitrarily while assessing the amount payable by the petitioners. Rather a Compensation Committee had passed a speaking order by taking into consideration the entire facts and circumstances of the case. The approach of the Compensation Committee while assessing the compensation cannot be found fault with. The petitioners are not entitled for alternative plot of 500 square yards in view of Government's policy letter dated 02.04.1973 as well as Government's offer letter dated 28.08.1975 as she raised dispute with regard to title. It is also proved on record that the petitioners had erected un-authorized communication towers in the premises and rented out a portion of the estate of M/s Reliance and M/s Viom. No sanction was obtained from the competent authority by the petitioners. The petitioners also ran a school from 1994-2010. These facts have not been categorically denied by the petitioners. Rather they took the plea that now the violations have ceased to exist.

In view of the above, the proceedings of the Compensation

Committee dated 05.01.2016 (Annexure P-45) are legal and valid and no interference is called for.

Dismissed.

(JITENDRA CHAUHAN)
JUDGE

10.07.2018

vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No