

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

**CWP No.25443 of 2013 (O&M)
Decided on: 25.09.2018**

Ashwani Kumar & othersPetitioners
Versus

State of Haryana & othersRespondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.R.S.Sihota, Sr.Advocate with
Mr.B.R.Rana, Advocate, for the petitioners.

Mr.Sudeep Mahajan, Addl.A.G., Haryana.

Mr.Amit Jain, Advocate, for respondent No.7(ii).

G.S. SANDHAWALIA, J.

CM-18304-CWP-2013

No reply has been filed to the application under Order 6 Rule
17 CPC inspite of the fact that notice was issued on 20.12.2013.

Resultantly, the application for amendment is allowed.

Amended writ petition is taken on record. Office to append the
same at appropriate place.

CM stands disposed of.

CWP-25443-2013

Challenge in the present writ petition is to the order dated
30.09.2002 (Annexure P-11) whereby the Chief Settlement Commissioner
has declined to entertain the application of Bal Mukand, father of the
petitioners wherein possession of the properties which were allotted to them
vide conveyance deed dated 20/21.10.1961, was denied, without going into
the fact that whether the allotment was genuine or nor and what was the
reasons for non-grant.

The said respondent, at an preliminary stage, had thrown out the petitioners on the ground that by entertaining the application would open a Pandora's Box and would result into usurpation of valuable Government properties. Rather he called for the explanation of one of the officials who had given a report on 21.06.2001 (Annexure P-7) that one of the properties stood sold to one Sunder Singh and it was a case of double allotment. It is to be noticed that the said order was passed without even calling upon the respondents to confirm the validity of the allotment and by coming to the conclusion on his own that how it would affect the respondent-Department.

The said view cannot be accepted in any manner which has wrongly been further upheld by respondent No.1-Commissioner and Secretary to the Government on 20.03.2003 (Annexure P-12). The said respondent also held that the original conveyance deed was not available and the petitioners were not in possession of the house and the property and no cogent reason had been given for the delay and he also dismissed the revision petition in limine.

Neither any effort was made to get the records and to confirm the fact whether there was any doubt about the allotment letters which have now been placed on record as Annexures P-1 to P-3. A perusal of the paperbook would go on to show that on account of the allotment of deed of conveyance in favour of Bal Mukand on 11.07.1962 (Annexure P-1) property bearing E.P. 1301, Narnaul, which has been described in the Schedule, was transferred to the predecessor-in-interest

of the petitioners under Rule 91(8) of the Displaced Persons (Rehabilitation & Compensation) Rules, 1954. Similarly, other properties bearing E.P.1081 & 1082 were also transferred on 20.06.1962 and the details have been given in Schedule-I.

An application had been filed on 10.08.2000 (Annexure P-4) as to the fact that it was not known that where the property was situated in the City Narnaul and to get the demarcation done, to the Naib Tehsildar (Sales) Rewari and to the Managing Officer, Rehabilitation Department, Rewari on 30.08.2000 (Annexure P-5). Resultantly, communication dated 21.06.2001 (Annexure P-7) was received that E.P.1081-82 was sold to one Sunder Singh for Rs.225/- on 07.11.1958 by the Central Government and the same had been allotted/sold twice and therefore, demarcation could not be done. The certificate dated 15.01.1959 in favour of the said Sunder Singh is also attached as Annexure P-9. It is, in such circumstances, the father of the petitioners- Bal Mukand approached the Commissioner and Secretary, Government of Haryana, Rehabilitation Department, wherein following order was passed on 03.06.2002 (Annexure P-10):

“3. I have gone through the files and found that after letter/decision of the Naib-Tehsildar (Rehabilitation)-cum-Managing Officer, Narnaul he has approached me directly. As per the provisions of Displaced Persons Compensation & Rehabilitation Act, 1954, there are alternative remedies available to him before approaching my court. I direct the petitioner to approach Chief Settlement Commissioner under Section 24 of Displaced Persons (Compensation & Rehabilitation) Act, 1954. As this judgment was reserved by

me, it may be communicated to all concerned.”

The same resulted in the dismissal of the claims without even calling upon the official respondents in a proper manner, as has been noticed above. Thereafter, the petitioners' father filed CWP-5775-2004, which was withdrawn on 02.09.2013, with permission to file a fresh one with better particulars and the explanation given was that on account of the impleadment of Sunder Singh, the requirement, as such, was felt and resultantly, the present writ petition was filed. The said orders have been challenged by filing written statement on the ground that the allotment had already been made and sold on 07.05.1958 to Sunder Singh. Further the stand taken was that the displaced persons' claims did not exist in view of the reappealing of the five Central Acts.

The said stand of the State, as such, cannot be accepted, in any manner. The authorities were under a bounden duty to call for the record of the proceedings under the Act and pass appropriate orders after satisfying itself of the legality and propriety and to come to a conclusion that whether the allotment was, as such, not genuine. Merely because the petitioners had approached the authorities at a belated stage was not a ground to throw them out at the outset. The valuable interests of the petitioners were involved of the immoveable property which have not been acted upon by the statutory authorities and therefore, the impugned orders cannot be sustained.

Accordingly, the present writ petition is allowed and the orders dated 30.09.2002 (Annexure P-11) and 30.03.2003 (Annexure

P-12) are set aside and it is directed that the petitioners' claim will be redecided by the competent authorities, after going into the merits of the case, afresh, since the case was pending at stage before the reappeal of the proceedings, therefore, the stand of the State is not correct to that extent.

The petitioners are also claiming alternative allotment, which is the prayer made in the present case also and the said issue shall also be gone into. Since it is an old case, it is expected that the authorities shall make earnest efforts to dispose of the issue within a period of 6 months from the receipt of the certified copy of this order.

25.09.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No