

CWP No.22732 of 2016 (O&M)

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

CWP No.22732 of 2016 (O&M)

Date of decision : 01.08.2018

Usha Gupta

... Petitioner

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Ranjit Saini, Advocate,
Mr. Munish Mittal, Advocate,
Mr. Malkeet Singh, Advocate
for the petitioner(s).

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Manoj Dhankhar, AAG, Haryana.

RAJESH BINDAL, J.

This order will dispose of nine writ petitions bearing CWP Nos. 22732, 24691, 24721, 24777, 24876, 25486, 25879, 26142 of 2016 and 10110 of 2017 as common issue is involved. However, the facts have been noticed from CWP No.22732 of 2016.

2. Writ petition has been filed challenging validity of Rule 8 (6) of the Haryana Evacuee Properties (Management and Disposal) Rules, 2011 (in short 'the Rules') and also order dated 09.12.2015 (Annexure P-8), vide which, the application of the petitioner for transfer of land in her possession, was dismissed in terms of Rule 8(6) of the Rules.

3. The petitioner, herein, claimed that her late husband was in cultivating possession of evacuee property measuring 1 kanal 3 marlas prior

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to 01.01.2001. Prior to that predecessors-in-interest of late husband of the petitioner were cultivating the land which is so reflected in the jamabandis for the years 1967-68 and 2007-08. Application moved by the petitioner for transfer of the land in her name was rejected.

4. Challenging the vires of Rule 8(6) of the Rules, the contention raised by learned counsel for the petitioner is that though the Rules provide for allotment of evacuee land in cultivating possession of any person from 01.01.2001 onwards, however, in Rule 8(5) of the Rules, it has been provided that portion of land, which is not exceeding two acres, but surrounded by the land of one person, having no approach, can be transferred in the name of that person, even though he may not be in possession thereof. Same principle could be applied in the case of the petitioner as well, as she is in possession of the land. Instead of auctioning the land as provided in Rule 8(6) of the Rules, the provisions should have been made for allotment of land in her favour.

5. Reference was made to the order passed by this Court on 17.02.2014 in CWP No.1919 of 2014 titled as "Iqbal Singh V/s The State of Haryana and others", wherein learned counsel for the State made a statement that the petitioner, therein, was entitled to allotment of a plot, hence, the writ petition was disposed of, for consideration of his case for allotment of plot.

6. Mr. Ranjit Saini, learned counsel appearing for some of the petitioners submitted that even the Rules are being applied discriminatory, there are number of instances, where the land, which is located on road or surrounded by land owned by different persons is being allotted instead of

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being auctioned.

7. Learned counsel appearing on behalf of the State submitted that earlier the State had framed a policy on 01.11.2001 providing for allotment of evacuee property in unauthorized occupation of the persons concerned on terms and conditions laid down in the policy. This Court in CWP No.2272 of 2003 titled as “Sh. Dalmer Singh V/s The State of Haryana and others” decided on 22.11.2010, considered the validity of the aforesaid policy and struck down the same finding it to be beyond the competence of the State. Thereafter the Rules in question were framed. Rule 8(5) of the Rules is reasonable as it provides for allotment of land to the person, who is having land all around portion of land which is evacuee property, for any other land which has approach, the same has to be auctioned. Both the Rules operate in different circumstances, hence, Rule 8(6) of the Rules cannot be said to be ultra vires.

8. He further submitted that if any wrong allotment has been made by any authority without following the procedure laid down in Rule 8(6) of the Rules pertaining to a portion of land which had approach or surrounded by land of other persons, that particular order may be wrong, but not the Rules as such.

9. Heard learned counsel for the parties and perused the paper book.

10. The relevant Rules are reproduced hereunder:-

Rule 3(1)

An application for allotment of land by a person under clause (a) of sub section (2) of section 4, who is in cultivating possession of any evacuee land shall be made to

Tehsildar concerned alongwith relevant documents in support of his claim within a period of six months from the date of notification of these rules or the date subsequently fixed by the Government from time to time.

Rule 6 (i) to (iii)

6. The rural land measuring less than one acre in a compact block and urban land and properties which are not in possession of any occupant or the occupant whose application for transfer of land as received under these rules has been rejected, shall be disposed off by way of public auction in the manner specified below,

(i) Tehsildar shall cause a proclamation of the intended public auction in Form III.

(ii) Notice of the intended auction shall be given at least fifteen days before the proposed auction and every such notice shall indicate the date, time and place of the proposed auction, the description of the property to be auctioned, its reserve price, the terms and conditions of the auction and any other particulars which the Tehsildar considers fit. One copy of the notice shall be affixed on a conspicuous part of the property to be auctioned. It shall also be published in two leading newspapers having circulation in the area of which at least one shall be in regional language.

(iii) Munadi shall be effected by Chowkidar of the village where the land is situated and a rapat in this regard shall be entered in the Roznamcha by the Patwari concerned and the proclamation shall be countersigned either by the village Sarpanch or a lambardar of the village or at least two members of the Gram Panchayat concerned or two Municipal Councillor, as the case may be.

Rule 8 (1) to (6)

(1) An application for transfer of land by an occupant or his successor-in-interest who is in continuous cultivating possession of any evacuee land from 1st January, 2001 shall be made to the Tehsildar concerned alongwith relevant documents in support of his claim within a period of six months from the date of notification of these rules or the date subsequently fixed by the State Government from time to time.

(2) The application so received by the Tehsildar shall be scrutinized by him after verification of the eligibility from the relevant documents including entries in the revenue record, if any, that the evacuee land in question was in possession on or before the 1st January, 2001 and still is in his continuous possession as on the date of scrutiny of the case, shall make an order for transfer of land at market price, preferably within a period of four months, if the applicant is otherwise eligible. The order so passed by him shall be subject to approval by the Commissioner (Sales).

(3) Market price of the land shall be the current market price which shall be average price in respect of a similar land on the basis of sale transactions in concerned revenue estate or locality or area or its vicinity during the preceding one year of the collector rate determine by the Deputy Commissioner concerned for similar category of land in same revenue estate or locality or area or its vicinity, whichever is higher.

(4) Notwithstanding anything contained in these rules, evacuee land recorded as gair mumkin rasta, johar, pond, public latrine, drains, shamshan ghat, roads, street, park, river, nala and other similar other categories of land which are being used for public purpose and the land made available due to river action shall not be transferred to its

occupant and the same shall be transferred to the concerned gram panchayat or municipality, as the case may be, free of cost subject to the condition that it shall not be transferred further to anyone by the said gram panchayat or municipality, as the case may be.

(5) Any piece of land not exceeding two acres surrounded by the land of one person and having no approach which cannot be disposed of in any other manner shall also be transferred to that person at the market price although the same may not be under his possession:

Provided that the Tehsildar may ignore stray entries made in the revenue record as per instructions issued in the department.

Provided further that the Tehsildar shall provide an opportunity of being heard to anyone concerned if there is a dispute regarding possession or someone makes an objection against the claim made by the applicant.

(6) Where any evacuee land not exceeding two acres is surrounded by the land of more than one person then it shall not be transferred to any of them but shall only be auctioned.”

11. The aforesaid Rules were notified on 18.01.2011.

12. Rule 3 (1) of the Rules provides for allotment of evacuee property on an application for allotment made by a person, who is in cultivating possession thereof.

13. Rule 6 of the Rules provides that any rural land measuring less than one acre in a compact block and urban land, and the properties which are not in possession of any occupant or any application for allotment of which has already been rejected, shall be disposed of by way of public auction, in the manner prescribed in the Rules.

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14. Rule 8 (1) of the Rules provides that an application for transfer of the land by an occupant or his successor-in-interest who is in continuous possession thereof from 01.01.2001, has to be made to the Tehsildar within six months from the date of notification of the Rules. Any land which is recorded to be used for any public purpose or is being used for any such public purpose, is not to be transferred to the occupant. Same has to be transferred to the concerned Gram Panchayat or Municipality with a condition that it is not to be transferred further under any circumstances.

15. Rule 8 (5) of the Rules provides that any piece of land not exceeding two acres surrounded by the land of one person, having no approach and which cannot be disposed of in any other manner, shall be transferred to that person at the market price although it may not be in his possession.

16. Rule 8 (6) of the Rules, validity of which is in question, provides that any evacuee land which is not exceeding two acres and is surrounded by the land of more than one person, shall be disposed of only by way of auction. Validity of the aforesaid Rule is in question.

17. Before examining the same, we deem it appropriate to refer to the Division Bench Judgment of this Court in Dalmer Singh's case (supra). Vide aforesaid judgment, number of writ petitions were disposed of and in one of the petitions, the issue raised by the writ petitioner was for allotment of land in his unauthorized possession in terms of the policy framed by the State on 01.11.2001, whereas in some petitions, prayer was for quashing the aforesaid policy. Narrating the background of the litigation, since independence of the country, how the land came to the ownership of the

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State as evacuee property, this Court opined that the policy which provided for allotment of land to the person, who had unauthorizedly occupied the same was beyond the competence of the State. Policy was held to be violative of principles of rule of law which is basic structure of our Constitution. Directions were given to initiate proceedings against unauthorized occupants to retrieve public property and thereafter, if need be, for sale thereof by way of public auction or otherwise, as per law.

18. The aforesaid judgment was delivered on 22.11.2010. Though the State normally gets up from slumber where immediate action is required. But in the case in hand, it was immediately thereafter, the Rules were notified on 25.01.2011.

19. As far as Rule 8 (6) of the Rules is concerned, we do not find that the same can be struck down being violative of any settled principle of law. Undisputedly, the persons who are seeking allotment of land are in unauthorized possession thereof. They do not have any right, title and interest in the property. They could not be allowed to usurp the State's property because of inaction of the officers concerned, who could not take care of the property of the State. They cannot be allowed to take benefit of it. Premium cannot be given to the violator of the law. This is what has been observed by this Court while referring to the earlier judgments of Hon'ble the Supreme Court in Dalmer Singh's case (supra), as well.

20. Rule 8 of the Rules provides that wherever the property is surrounded by land of more than one person, which has to be put to auction and cannot be transferred by any other means. Any of the occupants of land can very well participate in the auction and he cannot claim that it should be

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transferred to him at a reserved price to be determined in terms of the Rules which provide for calculation thereof, as per formula prescribed, namely, average price of similar land on the basis of sale transactions in the area. This Court had also observed while deciding Dalmer Singh's case (supra) that land should be sold by way of public auction or by adopting any other mode as per law. It cannot be disputed that auction is the best mode to dispose of the property as anyone interested has equal opportunity to participate in the process and the State also gets the fair value thereof, hence, we do not find that Rule 8 (6) of the Rules in any way is *ultra vires*.

21. For the reasons mentioned above, we do not find any merit in the writ petitions as the moment Rule 8 (6) of the Rules is held to be valid, the orders which have been impugned by the petitioners, will have to be upheld as their applications for allotment have been rejected only on the ground that the land in their occupation being surrounded by different persons, has to be sold by way of public auction only.

22. The petitions stand dismissed accordingly.

23. Before parting with the order, we could not comprehend as to the manner in which Rule 8 (5) of the Rules has been drafted. The country got independence in the year 1947. Undisputedly, the evacuee property was a result of migration of population.

24. It cannot be disputed that there had been consolidation after 1947. The evacuee property was well defined. Apparently, we do not find any justification that any evacuee property may be left without any passage, even after consolidation. Further Rule 8 (5) of the Rules goes contrary to what is mentioned in Rule 3 (1) of the Rules, which provides for allotment

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of land to any person, who is in cultivating possession, as Rule 8 (5) of the Rules provides for allotment even to a person who is not in possession of the land.

25. At the time of hearing, learned counsel for the petitioners had produced before the Court certain orders passed by the authorities where despite recording a fact that land in their possession was adjoining the road, but still the same has been allotted to them and not disposed of by way of public auction. Meaning thereby, the Rules are being violated more than being followed. We find that the conduct of the authorities needs to be examined as the public property cannot be allowed to be usurped by the illegal occupants in connivance with the officers of the State at a throw away prices as ultimately it is the State which suffers on account of connivance of few people.

26. Affidavit of Additional Chief Secretary & Financial Commissioner, Revenue and Disaster Management Department, Haryana, be filed stating total evacuee property as on 01.01.2001, what steps were taken to retrieve possession thereof in terms of judgment of this Court in Dalmer Singh's case (supra). Details of area allotted to the persons in exercise of powers under Rule 8 (5) of the Rules. He also needs to state as to how any land which was evacuee property remained without any passage in the process of consolidation, which may have taken place.

27. The details of the land which has been allotted in exercise of powers under Rule 8 (6) of the Rules be furnished, as counsel for the petitioners have referred to number of cases, where despite the land being on road or surrounded by the land of different owners, was not disposed of

by way of public auction, but was allotted to them at the rate determined in terms of the Rules for allotment of land.

28. For this purpose, CWP No.22732 of 2016 only be listed in Court on 29.11.2018.

29. The record of rest of the writ petitions be consigned to records.

(RAJESH BINDAL)
JUDGE

01.08.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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