

CWP-24493-2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-24493-2017

Date of Decision: December 10, 2018

Jaswant Singh & another

...Petitioners

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.S. Panag, Advocate,
for the petitioners.

Ms. Kanica Sachdeva, AAG, Punjab
for respondents No.1 to 3.

Mr. R.D. Bawa, Advocate &
Mr. Samuel Gill, Advocate
for respondent No.4.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the order dated 25.09.2017
(Annexure P-12) passed by the the Tehsildar (Sales), Ludhiana (West),
District Ludhiana and order dated 05.11.2013 (Annexure P-8).

2. It is the contention of the learned counsel for the petitioners
that the petitioners had earlier approached this Court by filing CWP
No.26648 of 2014, which was disposed of by this Court vide order dated
03.05.2017 (Annexure P-9), whereby, petitioners were permitted to avail of
their remedy as has been granted by the Division Bench of this Court to the
appellants in LPA No.2133 of 2013, on 28.07.2016 (Annexure P-17),

according to which, they would submit their claim within a period of one month from the date of order to the Competent Authority i.e. Tehsildar (Sales), who was to decide the claim of the petitioners in pursuance to the Policy dated 03.02.2010 within a period of four months. Petitioners, thereafter, preferred an application for extension of time to file the claim being CM No.9453 of 2017, which was disposed of by this Court vide order dated 31.07.2017 granting one month's more time from the date of the order. In pursuance to the order dated 31.07.2017 (Annexure P-10) passed by this Court. Petitioners, then, had filed an application for allotment of the land as per the 2010 policy. Tehsildar (Sales), Ludhiana (West), District Ludhiana, proceeded to reject the claim of the petitioners vide impugned order dated 25.09.2017 (Annexure P-12) by stating that the 2010 policy was not in force and therefore, petitioners were not entitled to the benefit of the said policy.

3. It is the contention of the learned counsel for the petitioners that it would not lie in the mouth of the Tehsildar (Sales), Ludhiana (West), District Ludhiana, to reject the claim without considering the same as per the policy dated 03.02.2010. Instead of considering the said claim, the application has been rejected on the ground that the said policy was not in force. That apart, he contends that the impugned order dated 25.09.2017 (Annexure P-12), in the light of the specific directions issued by this Court, cannot sustain and deserves to be set aside.

4. On the other hand, learned counsel for respondent No.4 contends that the claim of the petitioners has been rightly rejected by the Tehsildar (Sales), Ludhiana (West), District Ludhiana, vide impugned order

dated 25.09.2017 (Annexure P-12) as the petitioners had not applied as per the policy dated 26.09.2007 and what to say of letter dated 03.02.2010. He contends that there is no independent policy dated 03.02.2010 and what has been contemplated in the letter dated 03.02.2010 is merely extension of period of time, whereas, policy remained that of 2007 and the claim of the petitioners having not been submitted under the 2007 policy, the same has rightly been rejected. He further contends that prior to passing of the order dated 03.05.2017, no application had been submitted by the petitioners even under the letter dated 03.02.2010. His further contention is that 2007 policy of the Government of Punjab, in any case, has been set aside by the Hon'ble Supreme Court in Civil Appeal No.1132 of 2011, titled as 'Jagpal Singh & others Vs. State of Punjab & others' (Annexure P-13). He, thus, contends that the claim of the petitioners has rightly been rejected by the Competent Authority.

5. I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the records of the case.

6. Perusal of the order dated 03.05.2017 passed by this Court in CWP No.26648 of 2014 (Annexure P-9) would show that the petitioners as well as respondent No.4 and the State were parties to the same. All the pleas, which have been sought to be taken by the respondents, were open for consideration before the learned Single Judge and same were so considered. On consideration thereof, learned Single Judge has ultimately proceeded to grant the liberty to the petitioners to avail of their remedy within a period of

one month before the Competent Authority i.e. Tehsildar (Sales), Ludhiana (West), District Ludhiana, who was directed to consider the claim of the petitioners in pursuance to the policy dated 03.02.2010 within a period of four months. The said order has attained finality as none of the parties challenged the same. Petitioners, in pursuance to the said order of the learned Single Judge, had proceeded to submit an application within the time extended in subsequent application preferred by them. Had there being any such plea taken by the parties that there was no policy of 2010, the things would have been totally different. What has to be seen is the intention of the Court while passing the order and the Court meant that the claim of the petitioners was to be considered in the light of the policy framed by the State for the said purpose, for which, petitioners had put forth their claim with the latest amendment/clarification/extension thereto vide letter dated 03.02.2010. The Competent Authority was, therefore, required to consider the claim in the light of the applicable policy i.e. 2007 policy as extended by 2010. Whereas, the Competent Authority, without considering the same, has proceeded to reject the claim of the petitioners merely on the technical grounds. Had any of the parties i.e. State as well as private respondent(s) been aggrieved by the decision of the learned Single Judge, it was open to them to agitate the same. It is too late in the day now to take a plea, which was available to the parties at the time when the matter was decided by this Court vide order dated 03.05.2017, especially when the same had attained finality.

7. In the light of the above, the present writ petition is allowed and the impugned order dated 25.09.2017 (Annexure P-12) passed by the Tehsildar (Sales), Ludhiana (West), District Ludhiana, is hereby quashed. Direction is issued to the Tehsildar (Sales), Ludhiana (West), District Ludhiana, to consider the claim of the petitioners in the light of the policy(s) referred to above, on merits, within a period of four months from the date of receipt of certified copy of this order.

December 10, 2018
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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