

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: July 15, 2019

1. CWP No.25720 of 2016

Sandeep Kumar

...Petitioner

Versus

State of Haryana & others

...Respondents

2. CWP No.9817 of 2017

Sandeep Kumar

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Zorawar Singh Chauhan, Advocate,
for the petitioners.

Mr. Hitesh Pandit, Advocate,
for HPGCL.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Civil Writ Petitions bearing No.25720 of 2016 and 9817 of 2017 as identical relief has been claimed in both the cases. The facts are being taken from CWP No.25720 of 2016.

Petitioner Sandeep Kumar is aged about 29 years. He passed matriculation examination in 2002 and Senior Secondary Certificate Examination in 2005 from Board of School Education, Haryana. He also passed All India Trade Test for Craftsman Training Scheme held in January, 2015 from Vocational Education and Skill Development Department,

Government of Uttar Pradesh. Petitioner obtained Hartrons Diploma in Computer Science from Haryana State Electronics Development Corporation Limited. Land measuring 26 kanals 8 marlas belonging to the family of the petitioner situated in Village Khedar was acquired for setting up Rajiv Gandhi Thermal Power Plant. Initially there was some dispute with regard to acquisition of the land, but ultimately Haryana Government made an announcement to provide employment to one member of each of the families of Village Khedar (Hisar), whose land has been acquired on the basis of the qualification and eligibility criteria. At the time of acquisition and till today, family of the petitioner is joint and there is no partition among the legal heirs of Surta. Land measuring 26 kanals was jointly owned by Mamo widow of Surta, Dharam Pal, Shish Pal sons of Surta, Premo and Santra daughters of Surta. Petitioner is son of Shish Pal. However, the Government while making the award bifurcated the shares and made payments after considering the land as per the share of the co-owners. When the petitioner applied for government job, he and his family were not aware about rule of 2 acres, i.e., employment is to be provided to the family member of the family whose land more than 2 acre has been acquired. They moved two applications one by the petitioner and other by his cousin Abhishek, but no decision has been taken thereon so far.

Haryana Government policy dated 05.07.2007, extending opportunity of job to the members of the family came to be debated upon by the coordinate bench of this Court in two Civil Writ Petitions No.6505 of 2013 and 13142 of 2014 and vide decision dated 26.11.2015 noticing the aforementioned definition and the land holdings, the same were allowed.

It has been contended by the learned counsel for the petitioners

that the aforementioned judgment was assailed in LPA No.1297 and 1298 of 2016, but the same were dismissed. The specific averments made in para (vii) of para 2 of the writ petition read thus:-

“(vii) That at the time of acquisition the family of the petitioner was a joint family and till today the family is joint. There has been no partition among the legal heirs of Surta till date. At the time of acquisition the total land measuring 26 kanals situated in Hadbast No.127 Village Khedar district Hisar was jointly owned by Mamo widow of Surta, Dharam Pal son of Surta, Shish Pal son of Surta, Premo daughter of Surta and Santra daughter of Surta. The present petitioner is son of Shish Pal. However the Government while making an award bifurcated the shares and made the payments after considering the land as per the shares of the co-owners. It is further submitted that there was no partition among the co-sharers. The same is evident from the copy of mutation register. The copy of the mutation register is annexed herewith as Annexure P-8. It is pertinent to mention here that in 2008 when the petitioner applied for the government job at that time the petitioner and his family was not aware about the rule of 2 acres i.e. the employment is that to be provided to the family member of the family whose land more than 2 acre has been acquired. The petitioner and his family being unaware moved two applications son by the petitioner and the other by his cousin Abhishek son of Dharam Pal. But now the whole family is agreed for the job of the present petitioner. The copy of the affidavits given by the family members are annexed herewith as Annexure P-9, P-10, P-11 and P-12. That the applications for employment submitted by the petitioner and his cousin Abhishek have been kept pending till date. The copy of the relevant pages of list prepared by the Deputy Commissioner has been annexed herewith Annexure P-13).

The corresponding para of the reply is as under:-

“That the contents of Para No.2(vii) of the writ petition are wrong and hence vehemently denied. In reply to this para, it is submitted that land belonging to family member of the petitioner i.e. father, mother & brother is less than 2 acres and Chacha, Chachi, Tau, etc. cannot be considered petitioner's family members for the purpose as they are entitled for separate claims if their acquired land is more than 2 acres. Moreover, initially the petitioner and his cousin namely Abhishek s/o Sh.Dharampal try to take the benefit of the policy and when their claims are not considered due to acquired land is less than 2 acres.”

Mr. Hitesh Pandit, learned counsel for Haryana Power Generation Corporation Limited (HPGCL) submits that the family had already partitioned as the amount of compensation in respect of land acquired in 1998 was deposited in their individual accounts.

I have heard the learned counsel for the parties and appraised the paper book.

The definition of family extracted in the policy reads as under:-

“Family would mean as it stood on the date the land was acquired and not further subdivisions and subsequent families created on the basis of partition.”

On cumulative reading of the facts pleaded in the writ petition, written statement and as well as the mutation (Annexure P-8), Surta was the common ancestor and on demise, his estate was inherited in line of succession and the mutation was effected in favour of widow, son and daughter and there is no reflection of any individual partition. There could have been force in the contention of the learned counsel for the HPGCL had the definition of HUF or self-acquired property as defined in the Hindu Succession Act or Mullah Law had been in tandem with the notification, but

it is not so. Expression “family” would mean as it stood on the date the land was acquired and not further subdivisions and subsequent families created on the basis of partition. The land in the instant case acquired in 1998, whereas the mutation does not dispute that there was no individual partition qua the estate of Surta bearing Khasra No.194/14, 15,195/1, 2 measuring 26 kanals. The condition of minimum acquisition of 2 acres is sine-qua-non entitling the candidate for appointment. It is a matter of record that one of the cousin brother has applied, but the family gave an affidavit that they confined the claim qua one member, i.e., petitioner.

In my view, the case of the petitioners is wholly covered by the aforementioned judgment and as well as the facts pleaded. Resultantly, the writ petitions are allowed. Direction is issued to the respondents to consider the case of the petitioners subject to furnishing their affidavits.

July 15, 2019
ramesh

(AMIT RAWAL)
JUDGE

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