

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5123 of 2017

Date of Decision: 17.01.2019

Kamaljit Kaur
... Petitioner

VS.

State of Punjab & Ors.
... Respondents

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

Present: Mr. Naresh Kaushal, Advocate for the petitioner

Ms. Simran Grewal Randhawa, AAG Punjab

Mr. RS Khosla, Sr.Advocate with
Mr. Sarvesh Malik, Advocate for respondent No.3&4

G.S. SANDHAWALIA, J. (Oral)

(1) The petitioner seeks the benefit of Land Pooling Scheme dated 19.06.2013 (P3) and accordingly raised challenge to the Letter of Intent dated 10.11.2014 (P5) whereby lesser area has been granted to her as plot measuring 450 sq.yards has been allotted in Ecocity-2 Scheme, SAS Nagar.

(2) The petitioner’s land measuring 3 kanals 11.66 marlas situated in village Mullanpur Garibdass, District SAS Nagar was acquired for the development of Medi-City, Phase-2, in the Urban Estate Mullanpur, called New Chandigarh as per award dated 31.12.2013 (P1). In view of the policy dated 19.06.2013 (P3), the landowners shall be returned developed Residential & Commercial land as per the table given below:-

“1 Return of Developed Residential Land and Commercial land to land owners under Land Pooling Scheme-

1. The Land Owners shall be returned developed Residential & Commercial land as per table below:-

Land to be acquired (in kanal)	Developed residential area to be returned (in sq.yard)	Developed commercial area to be returned (except parking)	Remarks
1 kanal	150	-	No commercial site shall be given

2 kanal	300	-	No commercial site shall be given
3 kanal	450	-	No commercial site shall be given
4 kanal	500	One shop 12ft x 45ft – 60 sq yard	For shop basement, G+1, FAR 1:2.0 shall be permissible
8 kanal	1000	SCO/SCS 121 sq yard or 2 shops 12ft x 45ft – 60 sq.yard	For SCO/SCS basement, G+2, FAR 1:3.0 shall be permissible and For shop basement, G+1, FAR 1:2.0 shall be permissible

Note:

1. *An acre means standard acre having 8 kanal. Each Kanal shall be of 605 square yards in area.*
2. *No commercial plot shall be offered if the area acquired of the owner is less than 3 kanals.”*

(3) As per clause 6, if the area acquired for the scheme is in fractions & if the fraction is more than the half of the unit then the area acquired shall be counted in the next upper category. Clause 6 of the Scheme dated 19.06.2013 (P3) reads as under:-

“6. In case the area acquired for the scheme is in fractions & if the fraction is more than the half of the unit then the area acquired shall be counted in the next upper category e.g if the area acquired is 1.6 kanals it shall be considered as 2 Kanal for the purpose of entitlement of plot. In case the fraction of the area acquired is less than the half of the unit e.g the area acquired is 1.4 Kanal then it shall be counted as one Kanal for entitlement of plot.”

(4) Vide letter dated 13.05.2014 (P4), the petitioner opted for the benefit of the Land Pooling Policy. Resultantly, Letter of Intent (LOI) dated 10.01.2014 (P5) was issued by GMADA for a 450 sq.yards plot only. Vide

communication dated 12.02.2015 (P6), a representation was given vide which the petitioner asserted that her 43 biswas land was acquired and in lieu thereof only one residential plot of 450 sq.yards was allotted whereas the petitioner was entitled to two residential plots and one commercial plot. Therefore a legal notice was issued on 20.01.2016 (P7) whereby a request was made to round up the land upto 4 kanals for the entitlement of plot under the Land Pooling Scheme or alternatively allow the petitioner to opt out of the same to enable her to get compensation as per the Award passed by the Land Acquisition Collector. Since the respondents did not pay any heed to her request, the petitioner filed the writ petition i.e. CWP No.3812 of 2016 whereby directions were issued on 26.02.2016 (P8) to consider the demand notice dated 20.01.2016 and pass a speaking order.

(5) Resultantly, a speaking order dated 03.08.2016 (P9) has been passed whereby the demand for commercial liability as such given in the table reproduced above, has been rejected on the ground that no rate has been fixed for commercial plots and the commercial plots are sold only through an auction and hence fractional part cannot be rounded up. Similarly, the feasibility to round up the area of the petitioner as per the policy itself was rejected. However, condition was put that if the petitioner purchases differential area of land or the Special Letter of Intent in respect of fractionally less area from some other owner and applies for clubbing of the area and issue of Letter of Intent for a standard size plot, then as per provisions of the policy, the same was permitted. Resultantly, legal notice dated 14.09.2016 (P10) was issued to the GMADA for paying of compensation to the petitioner for the total acquired land measuring 3 kanals

11.66 marlas along with interest and thereafter the present writ petition has been filed.

(6) Counsel for the petitioner has restricted his prayer for the complete benefits to the effect of Land Pooling Policy only.

(7) A perusal of Clause 6 of the Scheme reproduced above would show that the benefit as such has to be granted wherein in case the area acquired for the scheme is in fractions & if the fraction is more than the half of the unit then the area acquired shall be counted in the next upper category. The petitioner thus comes within the ambit of consideration of a 500 sq.yards and commercial shop of 12ft x 45ft - 60 sq.yards. The LOI has been issued only for 450 sq. yards for 3 kanals which is one category below than the petitioner's entitlement.

(8) Senior Counsel Mr. RS Khosla, Sr. Advocate for GMADA has submitted that additional amount has to be deposited as per consent taken by the petitioner for covering fractional area as per Note-1 of the consent letter (P4). However from the policy nothing could be pointed out whether in case of rounding up, the cost of excess area will have to be deposited. In such circumstances, the defence as such that the additional amount is to be deposited is not justified as the petitioner is seeking the enforcement of Land Pooling Policy by a writ of mandamus. Therefore the respondents are bound by the Policy itself and if the policy itself does not contain any such clause for paying the cost of the excess area, the respondents cannot demand any such amount only on account of the 'consent' given by the petitioner which cannot bound the petitioner in any manner as per the terms of policy.

(9) Resultantly, the speaking order dated 03.08.2016 (P9) is quashed and the writ petition is allowed. The petitioner shall be granted the

benefit of rounding up as per the Land Pooling Policy and shall be allotted Letter of Intent for 500 sq.yards and one commercial shop of 12ft x 45ft - 60 sq.yards as per the table reproduced above.

(10) The needful shall be done within three months from the date of receipt of certified copy of this order.

17.01.2019

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(G.S. Sandhawalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
No