

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.106

CWP-24932-2019 (O&M)

Date of decision : 23.1.2020

Harkamljeet Singh and another

..... Petitioners

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Anuj Balian, Advocate, for the petitioners.

SUDHIR MITTAL, J. (Oral)

The predecessor-in-interest of the petitioners, namely, Rachpal Singh son of Kehar Singh was allotted 48 kanals 1 marla land in the year 1972. The allotment was on leasehold basis for a period of 10 years. The land in dispute is allegedly evacuee property. One of the terms of the lease was that after expiry of five years, the lease holder has an option of purchasing the same on payment of Rs.4 per acre for banzar land and Rs.25 per acre for gair mumkin land. The lease money was deductible from the sale price.

Said Rachpal Singh never applied for purchase of land in dispute during the currency of the lease. An application for purchase was made for the first time on 10.2.1994, but no action was taken thereupon and thus, the petitioners were constrained to approach this Court by way of CWP-3548-2013. The said writ petition was disposed vide order dated 18.2.2013 with directions to the Deputy Commissioner, Hoshiarpur, to decide the representation dated 16.10.2012, made by the petitioners by passing a speaking order. The said representation has been rejected vide order dated 8.8.2013. This order was challenged by way of revision petition, but the same was also dismissed vide order dated 13.7.2016. A further

Punjab, but the same was also rejected vide impugned order dated 8.4.2018.

Thus, the present writ petition has been filed.

Learned counsel for the petitioners submits that prior to making application dated 10.2.1994, the predecessor-in-interest of the petitioners had been approaching the department many times for purchase of the land, but his application for transfer was never accepted on the ground that stay order was operating against the land. Assuming, that the first application was made on 10.2.1994, the case of the petitioners was covered by Policy dated 10.3.1994, whereby surplus rural evacuee land could be disposed of in favour of an unauthorized occupant. Still further, Rule 5 of the Punjab Package Deal Properties (Disposal) Rules, 1976 (hereinafter referred to as 'the Rules') provides that in case an application for transfer is not made within the prescribed time, penalty amounting to 50% of the reserve price can be imposed. Thus, the authorities below were in error in rejecting the claim of the petitioners. It is also argued that a stay order was operating against the land and thus, predecessor-in-interest of the petitioners could not have applied for transfer of the land in accordance with terms of the lease and thus, there was no delay on his part. The predecessor-in-interest of the petitioners in fact applied after five years, but his application was not accepted on account of the operation of a stay order.

I shall first take up the contention of learned counsel for the petitioners that an application for transfer was in fact made during the lease period, but the same was not accepted by the department. On being asked to produce proof of having made such an application, learned counsel for the petitioners submits that the department has admitted that such application was made. In this regard, he has referred to order dated 8.8.2013 passed by

‘Moreover, stay had been imposed over such lands in the year 1974; which was in force (according to Tehsildar Hoshiarpur) upto the expiry of complete term of lease deed in the year 1982.’

The observation of the learned Deputy Commissioner only indicates that some stay order was operating in respect of the land in dispute since the year 1974 and that it was in operation till the expiry of the term of the lease in the year 1982. It does not convey that the predecessor-in-interest of the petitioners had in fact made an application and that the same was not accepted on account of said stay. Thus, there is no proof of any application for transfer having been made during the currency of lease.

The next argument of learned counsel for the petitioners is that his case is covered by the Policy dated 10.3.1994, a copy of which has been annexed as Annexure P-12.

The said policy pertains to disposal of surplus rural evacuee land in favour of those, who have been in continuous cultivating possession since the year 1992. Relevant part of clause (2) thereof is reproduced below:-

XXXXXX

‘(2) **Transfer to unauthorized occupants:-** The State Government have decided to transfer rural evacuee land to its unauthorized occupants who have been in continuous cultivating possession, since Kharif, 1992, on an area measuring up to a maximum of 3 ordinary acres, provided the land is situated beyond 2 miles but up to 5 miles from the limits of a municipal corporation, municipal committee, notified area committee/town area committee, and up to a maximum of five ordinary acres when situated beyond five miles of the aforesaid limit, inclusive of an occupant’s own holding, if any, subject to the provisions of Rule 3 of the Punjab Package Deal Properties

(Disposal) Rules, 1976. An unauthorized occupant of rural evacuee land will be eligible for the transfer of land in his favour if:’

- (i) xxxx
- (ii) xxxx
- (iii) xxxx
- (iv) xxxx
- (v) xxxx

The aforementioned clause makes it abundantly clear that the transfer could only be in respect of land situated beyond 2 miles of the limits of a Municipal Corporation, Municipality or other local body. The land of the petitioners is within 2 miles of a Municipality as is evident from order dated 18.4.2018, passed by the learned Financial Commissioner. Thus, the case of the petitioners is not covered by the Policy dated 10.3.1994 and they can take no benefit thereof.

Finally, the learned counsel for the petitioners has argued that Rule 5 of the Rules permits purchase of land on payment of penalty. In the considered opinion of this Court, the said Rule is not applicable because for the applicability thereof, the transfer of land should be permissible. Since, the land is situated within 2 miles of a Municipality, transfer cannot be made in favour of an unauthorized occupant and thus, Rule 5 cannot help the cause of the petitioners.

Learned counsel for the petitioners has also relied upon a Division Bench judgment in Bishan Singh and others Vs. Chief Settlement Commissioner and others 1973 PLJ 183, to argue that unauthorized occupants are entitled to purchase the land in their occupation, if there is surplus land available and the claim of the evacuees has been satisfied. It is

ratio of the aforementioned judgment, the petitioners have a right of transfer. This argument is again mis-conceived. A perusal of the aforementioned judgment shows that the right has been conferred in terms of the Press Note of 1962 or any subsequent Press Note. Thus, if there is a policy of the Government, which provides for transfer in favour of an unauthorized occupant, such an unauthorized occupant can seek relief thereunder. As has already been held, the Policy dated 10.3.1994 does not cover the case of the petitioners and thus, the petitioners cannot take any benefit of the aforementioned judgment.

The writ petition has no merit and is accordingly, dismissed.

(SUDHIR MITTAL)
JUDGE

23.1.2020
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No