

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 8124 of 2020

Date of Decision: 19.06.2020

Prithvi Raj and Others

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Vikram Singh, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

The writ petitioners have filed this petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari seeking quashing of orders dated 15.04.2020, 16.09.2014, 28.11.2013 and 24.10.2011 passed by the authorities in exercise of their powers under the Haryana Evacuee Properties (Management and Disposal) Rules, 2011.

A brief history/background would be necessary to understand the nature of the property involved in the present case. On partition of the country in the year 1947, certain residents had to shift to Pakistan from the area now forming part of India. The properties left behind by such persons were called “Evacuee Property” as defined in Section 2(d) of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as “the 1950 Act”). Apart therefrom, there was another Act i.e. the Evacuee Interest (Separation) Act, 1951 (hereinafter referred to as “the 1951 Act”)

concerning the evacuee properties. For allotment of the land or settlement of claims of the persons who had migrated from the area of Pakistan to India with respect to the properties left behind by them, the Displaced Persons (Compensation and Rehabilitation), Act, 1954 was notified. It may be noted here that the Union of India by the Central Act No. 38 of 2005 repealed the 1950 Act as well as the 1951 Act. The Union of India, thereafter, transferred the remaining evacuee properties to the respective States. The State of Haryana enacted the Haryana Evacuee Properties (Management and Disposal) Act, 2008 (hereinafter referred to as “the 2008 Act”) which is relevant in the present case. Section 2(b) thereof defines the “Evacuee Property”. The aforesaid Act came to be amended by the Haryana Evacuee Properties (Management and Disposal) Amendment Act, 2010 (hereinafter referred to as “the 2010 Act”). In order to effectively implement the provisions of the 2008 Act, the Haryana Government, in exercise of the powers conferred by Sub-Section (1) of Section 19 of the 2008 Act, notified Rules i.e. “the Haryana Evacuee Properties (Management and Disposal) Rules, 2011” (hereinafter referred to as “the 2011 Rules”).

As per the provisions of the 2008 Act and the Rules framed thereunder, the State of Haryana is entitled to manage and dispose the evacuee properties received by the State Government from the Central Government. The “evacuee property” has been defined in Section 2(b) of the 2008 Act in the following manner:-

“2(b) “evacuee property” means any evacuee property which has been received by the State Government from the Government of India in any manner or has become evacuee by

operation of any law, rules or orders or any other property described as such in the revenue record and includes the properties mortgaged by erstwhile Muslim evacuee owners in favour of locals or vice-versa.”

The writ petitioners claim that they are in continuance possession of the evacuee land for more than 100 years and hence, entitled to allotment as per the 2011 Rules.

At the outset, it is important to note here that out of total land measuring 22 kanals 19 marlas, the land measuring 14 kanals 19 marlas was sold through a restricted auction in the year 1977 to Budhi son of Girwar-respondent No.5. The auction sale was approved by the competent authority on 19.01.1978. Thus, when the 2008 Act came into force, the land measuring 14 kanals 19 marlas was not the “Evacuee Property”. For that reason, the application filed by the writ petitioners under the 2011 Rules has been held to be not maintainable with respect to the land measuring 14 kanals 19 marlas.

An application for transfer of land by an occupant of the land or his successor-in-interest, who is in continuance cultivating possession of any evacuee land from 01.01.2001, can be filed under Rule 8 of the 2011 Rules before the Tehsildar concerned along with the relevant documents in support of his claim within a period of six months from the date of notification of the 2011 Rules or the date subsequently fixed by the State Government from time to time. The 2011 Rules came to be notified on 18.01.2011. Although the date on which the writ petitioners filed the application is not clear from the documents filed or the pleadings, however, for the purpose of decision of

the present writ petition, it would not be of much relevance. Through the present writ petition, the dispute with respect to the land measuring 14 kanals 19 marlas is being adjudicated.

It may be significant to mention here that the writ petitioners submitted an application for allotment of land measuring 22 kanals 19 marlas, which was dismissed on 24.10.2011 after noticing that the land measuring 14 kanals 19 marlas stood disposed of in the year 1977. The Naib Tehsildar (Sales) also found that the application was submitted after the prescribed period of time. However, in appeal, the District Collector, vide order (Annexure P3), set aside the order passed by the Naib Tehsildar (Sales) with respect to the land measuring 8 kanals and directed the competent authority to re-decide the application with respect to the land measuring 8 kanals afresh. However, claim of the writ petitioners for allotment of the land measuring 14 kanals 19 marlas, which already stood disposed of, was rejected. The order passed by the District Collector has been upheld by the Chief Commissioner (Sales) and, thereafter, by the Financial Commissioner (Revenue). In the present writ petition, all the orders passed by the authorities, referred above, have been challenged.

It would be appropriate to notice that the petitioner has not placed on file all the documents necessary for disposal of the writ petition. From the careful reading of the impugned orders, passed by the authorities, it is apparent that after the year 1977, the writ petitioners or their predecessors filed civil suit which remained pending for quite some time. The judgment passed in the aforesaid civil litigation has not been placed on file. However, it is apparent that in the aforesaid litigation, the writ

petitioners were granted limited injunction against the forcible dispossession except in due course of law. Similarly, the writ petitioners have also not placed on file copy of the application submitted by the writ petitioners for allotment of the land under the 2011 Rules. This application would have thrown light as to how the writ petitioners claim right of consideration for allotment of the land measuring 22 kanals 19 marlas particularly when the land measuring 14 kanals 19 marlas has already been disposed of by the Central Government as such, it is no longer “evacuee property” within the meaning of the 2008 Act.

Still further, the writ petitioners have also not disclosed whether the auction/sale of the land measuring 14 kanals 19 marlas in the year 1977 approved by the competent authority in the year 1978 has ever been challenged by them or not in the pleadings. However, at the time of hearing, learned counsel for the writ petitioners on being asked, admitted that the sale of the property in favour of Budhi-respondent No.5 has never been challenged by the writ petitioners.

Learned counsel for the writ petitioners has submitted that as per Rule 6(xviii) of the 2011 Rules, once the possession of the land sold through auction has not been delivered to the auction purchaser due to any reason within a period of three months from the date of issue of the warrant of possession, therefore, he is now at liberty to seek refund of the amount deposited. Reliance in this regard is placed on Rule 6 (xviii), which reads as under:-

“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) to (xvii) XXXX XXXX XXXX XXXX

(xviii) Where the possession of land is not delivered to the auction purchaser due to any reason within a period of three months from the date of the issue of the warrant of possession, the auction purchaser shall be at liberty to seek the refund of the earnest money. On receipt of application in this regard, the Tehsildar shall refund the earnest money and the auction shall stand cancelled after issue of refund voucher.”

From the careful reading, it is apparent that these Rules are regulating the management and disposal of the evacuee properties which fall within the meaning of “evacuee property” as defined under the 2008 Act. Still further, as per Rule 6, extracted above, an option has been given to the auction purchaser to seek the refund of the earnest money if the possession of the land purchased is not delivered to him. However, this Rule cannot be interpreted to mean that if the auction purchaser does not get the possession within a period of three months from the date of the issue of warrant possession, the auction purchaser would be left with no right, title or interest in the property purchased.

This aspect can be further examined from another perspective. The Rules provide for a period of three months from the date of the issue of warrant of possession. The writ petitioners have not disclosed what was the

date of the issuance of warrant of possession to respondent No.5.

Thus, the writ petitioners do not have any right to apply for allotment of the land measuring 14 kanals and 19 marlas under the provisions of the 2008 Act or the Rules framed thereunder.

Consequently, the writ petition is dismissed.

(Anil Kshetarpal)
Judge

June 19, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No