

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

L.P.A. No.742 of 2016 (O&M) in
Civil Writ Petition No.615 of 2015
Reserved on : October 30, 2019
Date of decision: March 04, 2020

State of Haryana and another ...Appellants

Versus

Indian Hardware Industries Limited ...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Amar Vivek, Additional Advocate General,
Haryana for the appellants.

Mr.Kanwal Goyal, Advocate for the respondent.

HARINDER SINGH SIDHU, J.

1. The State of Haryana has filed this Letters Patent Appeal against the judgment dated 09.10.2015 in CWP No.615 of 2015 titled 'Indian Hardware Industries Limited vs. State of Haryana and others', whereby, the writ petition filed by the Respondent was allowed.

2. The Respondent-Company had filed the writ petition impugning the order/ letter dated 15.12.2014 (P-16) whereby the earlier communication dated 24.11.2014 (P-14) requiring it to deposit 25% of the total sale consideration along with other charges in respect of transfer of 3426 sq. yards of residential area to it, in terms of the order dated 13.10.2014 (P-12) of the Tehsildar (Sales), Faridabad under the provisions

of The Haryana Evacuee Property(Management and Disposal) Act, 2008, was withdrawn.

3. The facts in brief as emerging from the pleadings are that the Government of India had acquired 450 acres of land to establish a New Industrial Township at Faridabad (for short “NIT”) for persons displaced from Pakistan. Major portion of this land was given on lease to various industries. As per Memorandum of Agreement dated 23.09.1954 (P-1), two parcels of land total measuring 7.79 acres were leased out to the Respondent-Company by the Government of India for a period of five years. The *first parcel* being factory building along with land (combined area measuring 4.17 acres) and *second parcel* being residential complex consisting of 4 Bungalows over a piece of land measuring 3.62 acres i.e. 17562 sq. yards. The Respondent-Company came into possession of this property in terms of this agreement. This agreement/ lease, however, was never extended. The Respondent-Company purchased the factory area along with the building from the Government of India and a Sale Deed was executed on 22.10.1970 by the Government of India for land measuring 4.17 acres. This sale was effected under the The Displaced Persons (Compensation and Rehabilitation) Act, 1954. Though offer of sale of residential complex measuring 3.62 acres was also made to the company but the same did not materialize primarily because the Respondent-Company did not agree to its purchase at the rate at which it was offered by the Government.

4. In 1981, the Government of India transferred all residuary

assets of NIT, Faridabad to the State of Haryana against payment received from the latter. This included the four bungalows with an area of 17562 sq. yards which had been originally leased to the Respondent-Company.

5. Meanwhile, there was a dispute between the major shareholders of the company and litigation ensued. The factory was closed in 1972. It was revived and started working in June, 1979. During this period many unauthorized persons, most of whom had no concern or connection with the company, encroached upon the property and came into possession of different pockets of the 3.62 acres.

6. Those unauthorized occupants, as also the company, approached the State Government for transfer to them of land under their respective possession under the Policy and Rules in existence at that time as per which land/sites which had been under unauthorized occupation for a considerable time and over which substantial construction had been raised could be transferred to the occupants. In order to decide the claims over this 3.62 acres, a Commission comprising the Senior Town Planner, Municipal Corporation, Faridabad, Tehsildar (Sales) Faridabad and Naib Tehsildar Agrarian, Faridabad was constituted to survey the area to determine the possession and construction at site. The Commission visited the site on 12.09.1996 and prepared its report dated 30.09.1996. A site plan was prepared and 13 pockets were shown in possession by way of occupation with *pucca* structures. The company did not file any appeal against the said report and the same attained finality. The situation at the site has admittedly not changed since the report of the Commission.

7. The Haryana Evacuee Property (Management and Disposal) Act, 2008 (hereinafter referred to as '2008 Act') was enacted to provide for the management and disposal of evacuee property in the State of Haryana and matters connected therewith. As per Section 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 property by operation of any law, rules or orders or any other property described as such in the revenue records etc. The State has framed the Haryana Evacuee Property (Management and Disposal) Rules 2011 (hereinafter referred to as “2011 Rules”) under the Act.

8. The power to transfer Evacuee Property is contained in Section 4 of the 2008 Act which is as under:

“Section 4- Power to transfer Evacuee Property

- 1. Notwithstanding anything to the contrary contained in any judgment, order, decree or decision of a court of law or an authority, no allotment of Evacuee Property shall be made by any person except as per the provisions contained in Clauses (a) to (g) of Sub Section 2”.*
- 2. The Tehsildar may transfer any Evacuee property, except under Clause(c), on such terms and conditions as may be prescribed.-*
 - (a) to (c) xxx xxx xxx*
 - (d) by sale through public auction;*
 - (e) by sale through auction restricted to the members of the Scheduled Castes and Backward Classes, as notified by the State Government, from time to time, on such terms and conditions, as may be prescribed.*
 - (f) to the person on the basis of his possession under any*

policy, scheme or rules;

(g) to any person with disability, on such terms and conditions, as may be prescribed:

xxx xxx xxx”

As per this, the Tehsildar may transfer evacuee property on such terms and conditions as may be prescribed.

9. As per Section 7, any person aggrieved by an order of the Tehsildar may within thirty days prefer an appeal before the Commissioner (Sales). Any person aggrieved by an order of the Commissioner (Sales) may, within a period of sixty days from the date of the order, prefer a revision to the Chief Commissioner (Sales) under Section 8 of the Act. Section 9 confers residuary powers of State Government as per which the State Government may at any time call for the record of any proceedings under the Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and which is not inconsistent with the Act and the Rules. The powers of the State Government are exercisable by the Secretary.

These provisions are reproduced below:

“7. Appeal.

(1) Any person aggrieved by an order of the Tehsildar under this Act may, within a period of thirty days from the date of the order, prefer an appeal to the Commissioner (Sales), in such form and manner as may be prescribed:

Provided that the Commissioner (Sales) may entertain an appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause

from filing the appeal within the stipulated period, but no appeal shall be entertained after the period of ninety days from the date of such order.

(2) The Commissioner (Sales) after hearing the appeal, may confirm, vary or reverse the order appealed against or pass such order, as he may deem fit.

8. Revision.

(1) Any person aggrieved by an order of the Commissioner (Sales) may, within a period of sixty days from the date of the order, prefer a revision to the Chief Commissioner (Sales) in such form and manner as may be prescribed:

Provided that the Chief Commissioner (Sales) may entertain the revision after the expiry of the said period of sixty days, if he is satisfied that the applicant was prevented by sufficient cause from filing the revision within the stipulated period, but no revision shall be entertained after one hundred and twenty days from the date of the order of the Commissioner (Sales).

(2) The Chief Commissioner (Sales) may, after hearing the revision, confirm, vary or reverse the order under revision or pass such order, as he may deem fit.

9. Certain residuary powers of State Government.

The State Government may at any time call for the record of any proceedings under this Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act or the rules made thereunder:

Provided that the powers of State Government under this section shall be exercised by the Secretary:

Provided further that no order which prejudicially affects the interest of any person shall be passed under this section without giving him a reasonable opportunity of being heard.”

10. The allotment in question to the Respondent is under Section 4(2)(f) of the Act which contemplates allotment on the basis of possession under any policy, scheme or Rules.

11. Rule 10 deals with Transfer of urban property to its occupants under Section 4 (2)(f).

Sub-Rules (1) to (4) of Rule 10 are as under:

“(1)An application for transfer of urban property by an occupant or his successor-in-interest, who is in possession of the same from 1st January. 2001 or earlier, shall be made to the Tehsildar concerned along with relevant documents in support of his claim within a period of six months from the date of notification of these rules or the date subsequently fixed by the State Government from time to time.

(2)The application so received by the Tehsildar shall be scrutinized by him after verifying the eligibility from the relevant documents including voter identity card or electricity bill or telephone bill or water charges bill or any other relevant documents, The applicant shall prove continuous and undisputed possession from Ist January,2001 or earlier.

(3)If after examination, the Tehsildar finds the applicant eligible for transfer of the property, he shall make a speaking order for transfer of property at the market

four months from the date of receipt of the price preferably within a period of e application. The order so passed by him shall be subject to approval by the Commissioner (Sales).

Provided that where the documentary evidence produced by the applicant in support of his possession is found to be doubtful/fabricated one or has been tampered with malafide intention, the Tehsildar shall reject the application after affording an opportunity of being heard.

(4) Market price for the purpose of this rule shall be the same as defined in sub rule (3) of rule 8.

xxx xxx xxx”

Rule 12 provides for determination of eligibility for transfers under Section 4(2)(f). It is as under :

“12. (1) On receipt of an application for transfer of land/ property, the Tehsildar shall enter all such applications in a register and scrutinize the same under these rules and determine the eligibility of each applicant for transfer of such land/property.

(2) In determining the eligibility of the' applicant, The Tehsilar shall ensure that applicant's possession is established to be continuous and undisputed from 1st January 2001 to the date of scrutiny of his case from the entries made in the revenue records or from other documentary evidence:

Provided that in a case where the entries in the revenue record are found to be doubtful or have been tampered with or where any entry in the revenue record is found to have been corrected after coming into

force of the Act or evidence has been found to be tampered or fabricated one, The Tehsildar shall reject the same after affording an opportunity of being heard to the applicant. The Tehsildar shall initiate proceedings for eviction of the unauthorized occupant and for disposal of the property.”

Rule 13 deals with consideration and finalization of transfer application under Section 4(2)(f). It is as under:

13. *Where the Tehsildar is satisfied after scrutiny of the revenue record and other documentary evidence produced by the applicant that the occupant is eligible for the transfer of property in his possession, he shall pass a speaking order in this regard. The use and occupation charges shall be recovered within one month of the transfer order in favour of occupant and the charges shall be non refundable. Thereafter the Tehsildar shall refer the case to Commissioner (Sales) for passing appropriate orders. In case the transfer in favour of the applicant is approved by the Commissioner (Sales), the Tehsildar shall issue notice for recovery of twenty five percent of the total price which shall be paid within one month from the receipt of the notice failing which the application shall be rejected by the Tehsildar.*

Provided that where the Commissioner (Sales) is not satisfied with the transfer, as ordered by the Tehsildar, he shall pass an appropriate order regarding rejection of the application after affording an opportunity of bearing heard to the applicant. (emphasis supplied)

12. The Respondent-Company submitted representation/application dated 18.07.2011 (P-5) and 07.11.2011 (P-6) to Financial Commissioner, Government of Haryana for allotment of land as per 2011 Rules. As no decision was taken thereon, it filed CWP No.7633 of 2013. That petition was disposed of vide order dated 09.04.2013 (P-8) with a direction to the State to consider and decide the representation dated 18.07.2011. In compliance therewith the Naib Tehsildar (Rehabilitation) passed a detailed order dated 19.07.2013. The Respondent was found to be in possession of only 4586 sq. yards against its claim of 17562 sq. yards. The Tehsildar forwarded the case to Commissioner (Sales) for according administrative approval for allotment of 4586 sq. yards of land to the Respondent. Its claim for allotment qua the remaining land was rejected. The Commissioner (Sales), Faridabad vide order dated 10.09.2013 did not approve the order passed by the Naib Tehsildar (Sales) for transfer of 4586 sq. yards. Instead it directed for the transfer of 226.13 sq. meters of land only. Against the order of the Commissioner (Sales) Faridabad, the Respondent on 01.10.2013 filed a revision petition before the Commissioner Gurgaon Division, Gurgaon (exercising the powers of Chief Commissioner) under Section 8 of the 2008 Act, wherein it sought setting aside of the order dated 10.09.2013 to the extent that it had restricted approval for transfer of land measuring 226.13 sq. yards. It was prayed that the order dated 19.07.2013 of the Tehsildar (Sales) for transfer of 4586 sq. yards be approved. The Commissioner Gurgaon Division, Gurgaon vide order dated 18.11.2013 (P-10) set aside the order dated 10.09.2013 (P-9)

passed by Commissioner (Sales) and restored the order dated 19.07.2013 passed by Tehsildar (Sales). Thereafter, the Tehsildar (Sales), Faridabad issued a letter dated 4.12.2013 to the Respondent to deposit 25% of the sale price i.e. Rs.2,18,78,657/-. On all the formalities being completed, the sale deed in respect of the area of 4586 sq. yards was executed in favour of the Respondent.

13. After that, on 09.01.2014 the Respondent filed another revision petition before the Commissioner Gurgaon Division, Gurgaon (exercising the power of the Chief Commissioner (Sales)) under Section 8 of the 2008 Act. This revision was directed against the order dated 19.07.2013 of Naib Tehsildar (Sales) to the extent that it had rejected the claim of the Respondent for transfer of property measuring 12,976 sq. yards out of a total of 17562 sq. yards as also the order dated 10.09.2013 of the Commissioner (Sales) which had affirmed the same. The said revision was allowed by order dated 04.07.2014. The orders impugned were set aside and the case was remanded back to the Naib Tehsildar (Sales), Faridabad to decide the case afresh after giving opportunity to the company to produce evidence. Thereafter, the Tehsildar (Sales) Faridabad passed order dated 13.10.2014 (Annexure P-12.) holding that the Respondent had proved its claim in respect of additional 3426 sq. yards. Its claim with regard to the remaining land was rejected. A statement of the representative of the Respondent- Company was also recorded to the effect that in case its claim in respect of 3426 sq. yards is accepted, it would not raise any claim in respect of the remaining land. The land measuring 3426 sq. yards was

ordered to be transferred in the name of the Respondent for a total price of Rs.6,50,94,000/-. It was directed to deposit 20% of the said amount i.e. Rs.1,30,18,800/- within a period of 30 days. The company deposited the above mentioned amount vide challan dated 03.11.2014 (P-13). Thereafter the company received another letter dated 24.11.2014 (P-14), issued in terms of Rules 12 and 13 of 2011 Rules whereby it was directed to deposit another amount of Rs.2,13,43,980/- being 25% of the total price, the use and occupation charges to the tune of Rs.40,56,390/- as well as cost of structure of Rs.1,11,152/- within a period of 60 days. The said amount was deposited vide Annexure P-15. Thereafter the company received letter dated 15.12.2014 (P-16), intimating that as per order dated 15.12.2014 of the Deputy Commissioner, Faridabad the notice dated 24.11.2014 (P-14) for deposit of the amount has been withdrawn.

14. The Respondent filed the writ petition against this order dated 15.12.2014 which has been allowed vide the impugned judgment.

15. In the writ petition, it was contended by the Respondent that the impugned order dated 15.12.2014 did not contain any reasons for withdrawal of the earlier communication dated 24.11.2014. The company had already deposited the entire amount as demanded vide letter dated 24.11.2014. The sale of the land was almost complete. All the procedural requirements had been complied with. In the order of the Tehsildar (Sales) dated 13.10.2014, a clear finding had been recorded that the company was in possession of area measuring 3426 sq. yards much before 1.11.2001. The company had even given up its claim to remaining areas subject to transfer

of this land. There was no justification for passing order dated 15.12.2014 withdrawing the earlier order dated 24.11.2014.

16. On behalf of the State, a reply had been filed by the Tehsildar (Sales) Faridabad wherein it was stated that in this case two revision petitions had been filed against the same order and two different orders dated 18.11.2013 and 04.07.2014 were passed in the revision proceedings against the same order. Hence, it was proposed that clarification was required from the Commissioner and till such clarification, it was considered necessary that the demand notice should be withdrawn. It was stated that the allotment of the plot to the Respondent had not been cancelled. It was further stated that the Commissioner, Gurgaon had in turn sent a reference to the Additional Chief Secretary and Financial Commissioner to Government of Haryana, Revenue and Disaster Management Department (Rehabilitation Branch), Chandigarh which had been admitted, notices had been issued to the parties and the matter was pending consideration before the said Authority. An additional affidavit dated 01.08.2015 of Krishan Kumar, Tehsildar (Sales) Faridabad was also filed in which it was stated that after considering the entire material on record not only was a reference made to the State Government invoking the jurisdiction of the Financial Commissioner Revenue for considering the entire matter afresh but a vigilance enquiry had also been ordered in the matter to examine the role of the officers concerned who in an unauthorized manner passed benefits of illegal allotment of public land to the Respondent-Company. It was further stated that the 20% amount deposited

by the Respondent towards use and occupation charges had been refunded to it. It has been further asserted that despite having received letter withdrawing the earlier letter dated 15.12.2014 on that date itself, the Respondent chose to deposit the 25% amount on 22.12.2014 and the same could not bind the State.

17. On the basis of the aforesaid stand in the written statement various contentions were raised on behalf of the State including that the appeal/ revisions had been filed beyond limitation, the company had restricted its claim only to 4586 sq. yards and given up the rest. However, the primary contention was that once an earlier revision dated 01.10.2013 against the orders dated 19.07.2013 and 10.09.2013 was decided vide order dated 18.11.2013 (P-10) a second revision against the same orders was not permissible. Not only was there no provision for filing a second revision against the same order it was argued that such a recourse was also impermissible on the principles as enshrined in Order 2 Rule 2 of the Code of Civil Procedure. Further on merits it was argued that the possession of the company over an additional area of 3426 sq. yards was not borne out from the record.

18. The Ld. Single Judge negated all these contentions. Regarding the contention that second revision is not maintainable, Ld. Single Judge held that as no such objection had been taken by the State before the Authorities at any stage it could not be permitted to be taken before this Court. The Ld. Single Judge further noted that it had been wrongly contended on behalf of the State that the Respondent Company had

restricted its rights 4586 sq. yards of land while filing the first revision. To the contrary, the Company had been agitating for claiming the remaining land by filing separate revision petition. Vide subsequent order dated 13.10.2014, additional area of 3426 sq. yards was ordered to be transferred in its favour and pursuant thereto the amount as specified in the Rules had also been deposited. Ld. Single Judge observed that conjoint reading of Section 4 of the 2008 Act (as amended in 2010) as well as Rules 12 and 13 of the 2011 Rules reveals that the Tehsildar (Sales) has been granted the power to transfer evacuee properties on terms and conditions as prescribed under the Act. This power was subject to scrutiny by Commissioner (Sales), which under Rule 13 can reject the recommendation of the Tehsildar (Sales) for allotment of land if it is not as per the provisions. If such recommendation is not rejected, the Tehsildar (Sales) would direct the proposed allottee to deposit 25% of the amount within a period of one month. In the present case, the Commissioner (Sales) had passed order dated 19.11.2014 asking Tehsildar (Sales) to sell the property at the latest rates. Thus, in effect the Commissioner (Sales) had approved the allotment of disputed property and this order had become final. Only certain formalities remained to be complied with. Thereafter the matter could have been opened only if there was any default in payment on behalf of the Company, which admittedly was not the case.

19. Ld. Single Judge further noted that the Tehsildar, Faridabad in his affidavit dated 5.8.2015 had admitted that 9550 square yards of vacant land has been allotted to nine persons. Ld. Single Judge found it strange as

to why only allotment to Respondent company had not been made when the claim of other persons already stood adjudicated. Ld. Single Judge further noticed that a positive finding of fact had been reached that the Respondent Company was in possession of particular area and the Court could not interfere with the same.

20. Regarding the reference to the Additional Chief Secretary, Govt. of Haryana, Ld. Single Judge noted that no doubt as per Section 9 of the 2008 Act the State Government has been conferred with powers to call for the records at any time under any proceedings under the Act and pass such orders in relation thereto as in its opinion the circumstances require and was not inconsistent with any provisions in the Act or Rules made thereunder. But in terms of this provision, the State Government could scrutinize the records and pass an order only in cases where it was apparent from the record that any allotment had been made by the concerned officers beyond the purview and scope of the Act or where any provisions of the Act or Rules had been violated. As in the present case there was no infraction of any Act or Rules, the allotment could not be reopened in exercise of the powers under Section 9 of 2008 Act. Accordingly, the impugned reference to the State Government was held to be illegal. The State was directed to allot the remaining land i.e. 3426 square yards to the Company within a period of two months.

21. Ld. Counsel for the State argued that the Ld. Single Judge has erred in holding that merely because no objection regarding the maintainability of the second revision had been raised before the authorities,

it could not be permitted to be raised in writ petition before the High Court. He argued that the Respondent had raised a claim for transfer of the entire 17562 sq. yards of land. But on detailed scrutiny, the Tehsildar (Sales) vide his order dated 19.07.2013 found him to be entitled to only 4586 sq. yards. His claim qua the remaining land was specifically rejected. The Commissioner (Sales), Faridabad vide order dated 10.09.2013 did not approve the order passed by the Naib Tehsildar (Sales) for transfer of 4586 Sq. Yards. Instead he directed for the transfer of 226.13 sq. meters of land only. Against the order of the Commissioner(Sales) the Respondent on 01.10.2013 filed a revision petition before the Commissioner Gurgaon Division, Gurgaon who vide order dated 18.11.2013 (P-10) set aside the order dated 10.09.2013 (P-9) passed by Commissioner (Sales) and restored the order dated 19.07.2013 passed by Tehsildar (Sales). As in these proceedings the Respondent did not assail the order dated 19.07.2013 rejecting his claim for the remaining land it attained had finality and could not be reopened by way of a subsequent revision. He argued that under the scheme of the Act there was no provision for filing successive/multiple revisions against a single order. If it were so permitted it would be prone to great misuse and lead to passing contradictory orders by the same authority as has happened in the present case where in the second revision decided on 04.07.2014 the Chief Commissioner (Sales) Gurgaon has set aside the orders of the courts below which would obviously include the order dated 19.07.2013 which had been affirmed in the earlier revision dated 18.11.2013 and pursuant whereto land measuring 4586 sq. yards had been

transferred to the Respondent. He argued that the matter was rightly been referred to the State Government under Section 9 of the Act to consider the entire matter afresh in the light of the contradictory/inconsistent orders dated 18.11.2013 and 04.07.2014 passed in the two revisions filed by the Respondent . He argued that the Ld. Single Judge ought not to have interdicted the exercise of residuary powers of the State Government at the threshold. The Respondent company could avail of its remedies if aggrieved by any order passed by the State Government.

22. Ld. Counsel for the Respondent- company on the other hand argued that the reference to the State Government was wholly uncalled for as there was no infirmity in the decision to transfer land to it.

23. Having heard Ld. Counsel for the parties we are of the view that the appeal deserves to be allowed.

24. As per Section 4(2) of the Act, the Tehsildar may transfer any Evacuee property on such terms and conditions as may be prescribed. The detailed procedure for transfer of land, determination of eligibility and finalization of the transfer application in respect of transfer of land under Section 4(2) (f) is prescribed in Rules 10, 11 and 12 of the 2011 Rules, which have been reproduced above. As per Rule 10 an application for transfer of urban property by an occupant or his successor-in-interest, who is in possession of the same from 1st January, 2001 or earlier, is to be made to the Tehsildar concerned along with relevant documents in support of his claim. If after verifying the eligibility from the relevant documents, the Tehsildar finds the applicant eligible for transfer of the property, “he shall

make a speaking order for transfer of property at the market price preferably within a period of four months from the date of receipt of the application”. The order so passed by him “shall be subject to approval by the Commissioner (Sales)”. As per Rule 13 where the Tehsildar is satisfied after scrutiny of the revenue record and other documentary evidence produced by the applicant that the occupant is eligible for the transfer of property in his possession, he is required to pass a speaking order in this regard. Thereafter the Tehsildar shall refer the case to Commissioner (Sales) for passing appropriate orders. In case the transfer in favour of the applicant is approved by the Commissioner (Sales), the Tehsildar is to issue notice for recovery of twenty five percent of the total price which shall be paid within one month from the receipt of the notice failing which the application shall be rejected by the Tehsildar. Where the Commissioner (Sales) is not satisfied with the transfer, as ordered by the Tehsildar, he shall pass an appropriate order regarding rejection of the application after affording an opportunity of bearing heard to the applicant.

25. As per Section 7 any person aggrieved by an order of the Tehsildar may, within thirty days, prefer an appeal before the Commissioner (Sales). Any person aggrieved by an order of the Commissioner (Sales) may, within a period of sixty days from the date of the order, prefer a revision to the Chief Commissioner (Sales) under Section 8 of the Act. Section 9 confers residuary powers of State Government as per which the State Government may at any time call for the record of any proceedings under the Act and may pass such order in relation thereto as in its opinion,

the circumstances of the case require and which is not inconsistent with the Act and the Rules. The powers of the State Government are exercisable by the Secretary.

26. In this case, the Respondent vide application dated 18.07.2011 had raised a claim for transfer of 17562 sq. yards of land. The Tehsildar (Sales) vide his order dated 19.07.2013 found him to be entitled to only 4586 sq. yards. Its claim qua the remaining land was rejected. The Commissioner (Sales), Faridabad vide order dated 10.09.2013 did not approve the order passed by the Naib Tehsildar (Rehabilitation) for transfer of 4586 Sq. Yards. Instead he directed for the transfer of 226.13 sq. meters of land only. Against the order of the Commissioner(Sales) the Respondent on 01.10.2013 filed a revision petition before the Commissioner Gurgaon Division, Gurgaon who vide order dated 18.11.2013 (P-10) set aside the order dated 10.09.2013 (P-9) passed by Commissioner (Sales) and restored the order dated 19.07.2013 passed by Tehsildar (Rehabilitation). Respondent filed revision dated 01.10.2013 (the first revision) wherein its claim was as under:

“To accept the revision petition, set aside the impugned order dated 10.09.2013; P1 to the extent it has restricted the approval for transfer of the land measuring 226.13 sq. mtrs. and to grant approval to the order dated 19.07.2013 passed by the Tehsildar Sales, Faridabad for transfer of the land measuring 4586 sq. yds. in favour of the petitioner Company P-2.”

27. As per the provisions of the Act and Rules referred to above if the Respondent was aggrieved by the order dated 19.07.2013 of the

Tehsildar (Sales) allowing its claim only to the extent of 4586 sq. yards and rejecting the rest, it was required to assail that part of the order before the Commissioner (Sales) by way of appeal under Section 7 of the Act within the prescribed limitation period of thirty days which could be extended on sufficient cause shown. Ld. Single Judge has held that the Commissioner (Sales) while considering the case for approval of the order dated 19.07.2013 of the Tehsildar (Sales) for transfer of land measuring 4586 sq. yards, had dealt with the issue as if deciding an appeal. Hence this necessitated the Respondent filing a revision rather than an appeal. Even if that is accepted, the Respondent should have assailed the orders rejecting its claim qua the remaining land in the first revision. Instead in the first revision dated 01.10.2013, its claim was only that the order dated 10.09.2013 of the Commissioner (Sales) to the extent it has restricted the approval for transfer of the land measuring 226.13 sq. mtrs be set aside and the order dated 19.07.2013 passed by the Tehsildar (Sales), Faridabad for transfer of the land measuring 4586 sq. yds. in its favour be approved. There was no challenge to that part of the order whereby its claim for the remaining area was rejected. That revision was accepted. Thereafter, land measuring 4586 sq. yards was transferred in favour of the Respondent.

28. After that, the Respondent filed second revision dated 09.01.2014 in which its claim was:

“Revision Petition under Section 8 of the Haryana Evacuee Properties (management and Disposal) Act, 2008 against the impugned order dated 19.07.2013 passed by the Naib Tehsildar (Sales), Faridabad, annexure P-2, whereby he has

rejected the claim of the petitioner for transfer of the property measuring 12,976 sq. yds out of total 17562 sq. yds (3.62 acres) as property measuring 4586 sq. yds has been transferred to the petitioner already and the order dated 10.9.2013 passed by the learned DC-cum-Commissioner (Sales) Faridabad annexure P-1, wherein, observations have been made against the petitioner regarding factum of possession over the property in question.”

The second revision was decided on 04.07.2014. The orders of the courts below were set aside. These obviously would include the order dated 19.07.2013 which had been affirmed in the earlier revision dated 18.11.2013 and pursuant whereto land measuring 4586 sq. yards had been transferred to the Respondent .

29. In these circumstances, when there were two different orders dated 18.11.2013 and 04.07.2014 passed in two different revisions against the same order dated 19.07.2013 of the Teshildar (Sales), if it was felt that a clarification was required from the Commissioner and the Commissioner, Gurgaon after examination of the entire material on record sent a further reference to the Additional Chief Secretary and Financial Commissioner to Government of Haryana, Revenue and Disaster Management Department (Rehabilitation Branch), Chandigarh, we see no infirmity in the same. Section 9 confers residuary powers of State Government as per which the State Government may at any time call for the record of any proceedings under the Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and which is not inconsistent with the Act and the Rules.

30. It is also pertinent to note that in the additional affidavit dated 01.08.2015 of Krishan Kumar, Tehsildar (Sales) Faridabad it has been asserted that a vigilance enquiry had also been ordered into the matter to examine the role of the officers concerned who in an unauthorized manner passed benefits of illegal allotment of public land to the Respondent company.

31. As rightly argued by the Ld. Counsel on behalf of the State the actions aforementioned cannot be interdicted at the threshold. The Respondent company could avail of its remedies if aggrieved by any order passed by the State Government.

32. Right of appeal/ revision are creations of the Statute. Section 7 and 8 of the 2008 Act are the provisions for filing appeal/ revision. These do not contemplate filing appeal or revision against parts only of the orders by which the applicant may be aggrieved. In other words, the provisions do not contemplate splitting of one impugned order into two or more and filing two or more appeals/ revisions accordingly. Permitting such a recourse would be prone to grave misuse and lead to a situation where contradictory orders may be passed by the appellate/ revisional authority regarding the same order. Further even though the proceedings under the 2008 Act are not governed by the provisions of the Code of Civil Procedure but the principle behind Order 2 Rule 2 of the Code as per which if a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished being a salutary principle would be a useful guide in this

regard.

33. There is another aspect of the matter which needs consideration. As per Rule 10 and 13 the Tehsildar (Sales) if satisfied that the applicant is entitled to transfer of land is required to pass a speaking order. This order is subject to approval of the Commissioner (Sales).

Ld. Single Judge in paragraph 13 of the judgment has observed as under:

“The Tehsildar (Sales) in his office noting dated 11.11.2014/18.11.2014 has acknowledged the receipt of Rs.1,30,18,800/-vide challan no.034578004 dated 11.11.2014 and on this noting, the learned Commissioner(Sales) had written as follows:-

- 1. Take new and latest rates from the Committee as applicable on the date of order of Tehsildar.*
- 2. ADA/DMO to check admissibility of claim and rates and other legalities also.*

In effect, the learned Commissioner (Sales) had approved the order passed by the Tehsildar (Sales) and had applied his mind while directing the Tehsildar (Sales) to verify the applicable rates. Thus, as per Rules 12 and 13 of 2011 Rules, the sale had become final.”

34. Clearly, there is no specific order of the Commissioner (Sales) approving the order of the Tehsildar (Sales) dated 13.10.2014 for transfer of 3426 sq. yards of land to the Respondent. Ld. Single Judge has inferred the approval from the noting of the Commissioner (Sales) to take the new and the latest rates from the Committee.

35. The issue involves transfer of valuable land to the Respondent.

The transfer is permissible only on certain conditions specified. The

Tehsildar (Sales) is required to pass a speaking order while allowing the claim. Under Rule 10 the order of the Teshildar (Sales) is made subject to the approval of the Commissioner (Sales.). The requirement obviously is that the Commissioner (Sales) before according approval would duly apply his mind and pass a specific order approving/ disapproving the order of the Tehsildar (Sales).

36. There are similar provisions in different Acts/ Rules where an order passed by an authority “shall be subject to approval” of another authority. In such a situation the approval is held to be mandatory and the order passed by the first authority is conditional and takes effect only when approved by the authority to whose approval it is made subject .

37. In **Padubidri Damodar Shenoy v. Indian Airlines Ltd., (2009) 10 SCC 514**, the Hon'ble Supreme Court was construing Regulation 12 of the Service Regulations for Employees (other than those in the Flying Crew and those in the Aircraft Engineering Departments). As per clause (b) of this regulation an employee on the completion of 20 years of continuous service may by giving three months' notice voluntarily retire from the service. As per proviso to clause (b) *“the voluntary retirement under clause (b) shall be subject to approval of the competent authority:”*

38. Hon'ble Supreme Court held that the use of the word “shall” in the proviso, leads to an inference that the provision is imperative. The effect of the use of words “subject to” is to introduce a condition. The expression, “shall be subject to approval” is indicative of its intendment that the voluntary retirement applied by the employees covered by clause (b) is

effective only upon approval by the competent authority. It was observed :

“21. Regulation 12 of the Service Regulations, inter alia, enables an employee to seek voluntary retirement on attaining the age of 55 years or on completion of 20 years of continuous service by giving three months’ notice. An employee who has attained the age of 55 years and has applied for voluntary retirement under Regulation 12, his voluntary retirement is automatic on expiry of the notice period i.e. three months. Is it equally applicable to an employee who has not attained the age of 55 years but completed 20 years of continuous service and applied for voluntary retirement. In our judgment, it is not so because for a category covered by clause (b), namely, an employee having completed 20 years of continuous service who has given three months’ notice for voluntary retirement from the service, a proviso appended thereto provides that voluntary retirement under clause (b) shall be subject to the approval of the competent authority.

xxx xxx xxx

32. The use of the word “shall” in the proviso, prima facie leads to an inference that the provision is imperative. There is nothing in the context to suggest that it is merely directory. It is followed by the words, “subject to approval”. The effect of the use of words “subject to” is to introduce a condition. The expression, “shall be subject to approval” is indicative of its intendment that the voluntary retirement applied by the employees covered by clause (b) is effective only upon approval by the competent authority. The effect of these words is to introduce a condition and thereby make voluntary retirement applied by the employees covered by Category (b) conditional upon its approval by the competent authority.”

39. In **Rajesh Kumar v. CIT, (2007) 2 SCC 181**, Hon'ble

Supreme Court was construing Sub-Section (2A) of Section 142 of the Income Tax Act, 1961 where under if, at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts of the assessee and the interests of the Revenue, could with the previous approval of the Chief Commissioner or Commissioner, direct the assessee to get the accounts audited by an accountant. Hon'ble Supreme Court held that the approval by the Chief Commissioner is also not to be mechanically granted. The same should be done having regard to the materials on record as he could arrive at a different opinion than the Assessing Officer. The relevant observations are:

“19. Sub-sections (2-A), (2-B), (2-C), (2-D) and (3) of Section 142 of the Act read as under:

“142. (2-A) If, at any stage of the proceedings before him, the assessing officer, having regard to the nature and complexity of the accounts of the assessee and the interests of the Revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or Commissioner, direct the assessee to get the accounts audited by an accountant, as defined in the Explanation below sub-section (2) of Section 288, nominated by the Chief Commissioner or Commissioner in this behalf and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed and such other particulars as the assessing officer may require.

(2-B) The provisions of sub-section (2-A) shall have effect notwithstanding that the accounts of the assessee have been audited under any other law for the time

being in force or otherwise.

xxx xxx xxx”

58. An order of approval is also not to be mechanically granted. The same should be done having regard to the materials on record. The explanation given by the assessee, if any, would be a relevant factor. The approving authority was required to go through it. He could have arrived at a different opinion. He in a situation of this nature could have corrected the assessing officer if he was found to have adopted a wrong approach or posed a wrong question unto himself. He could have been asked to complete the process of the assessment within the specified time so as to save the Revenue from suffering any loss. The same purpose might have been achieved upon production of some materials for understanding the books of accounts and/or the entries made therein. While exercising its power, the assessing officer has to form an opinion. It is final so far as he is concerned albeit subject to approval of the Chief Commissioner or the Commissioner, as the case may be. It is only at that stage he is required to consider the matter and not at a subsequent stage viz. after the approval is given.”

Thus, it can safely be concluded that the requirement for approval of the order of the Tehsildar (Sales) by the Commissioner (Sales) is mandatory. The Commissioner (Sales) is required to examine the order passed by the Tehsildar (Sales) with regard to the satisfaction of the conditions by the applicant for allotment and only then grant approval. A specific order granting approval is the requirement of the Rule 10 and 13. There is no scope for intendment or approval by implication. In the present case there is no specific order of approval of the order dated 13.10.2014 of the Tehsildar

(Sales) by the Commissioner (Sales).

40. Accordingly, this appeal is allowed. The judgement of the Ld. Single Judge is set aside. It is held that there is no infirmity in the letter dated 15.12.2014 of the Deputy Commissioner (Annexure P-16) and the further reference made to the Additional Chief Secretary & Financial Commissioner to Government of Haryana, Revenue and Rehabilitation Department by the Commissioner Gurgaon, Division Gurgaon. The former may proceed to decide the reference in accordance with law.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 04, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No