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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) CWP-4830-2022 (O&M)
Date of decision:10.04.2023

OM PARKASH ...Petitioner

Versus

STATE OF HARYANA AND OTHERS ...Respondents

(2) CWP-4831-2022 (O&M)
SANJEEV KUMAR ...Petitioner

Versus

STATE OF HARYANA AND OTHERS ...Respondents

(3) CWP-4835-2022 (O&M)
MADAN LAL ...Petitioner

Versus

STATE OF HARYANA AND OTHERS ...Respondents

(4) CWP-4836-2022 (O&M)
SUKHDEEP KUMAR ...Petitioner

Versus

STATE OF HARYANA AND OTHERS ...Respondents

(5) CWP-4951-2022 (O&M)
SHISHPAL ...Petitioner

Versus

STATE OF HARYANA AND OTHERS ...Respondents

CWP-4830-2022 & connected cases	2023:PHHC:048351-DB	-2-
(6)	CWP-5580-2022 (O&M)	
RAVI PARKASH		...Petitioner
	Versus	
STATE OF HARYANA AND OTHERS		...Respondents
(7)	CWP-5583-2022 (O&M)	
SUKHDEV		...Petitioner
	Versus	
STATE OF HARYANA AND OTHERS		...Respondents
(8)	CWP-5586-2022 (O&M)	
HARBANS LAL PAPNEJA		...Petitioner
	Versus	
STATE OF HARYANA AND OTHERS		...Respondents
(9)	CWP-5609-2022 (O&M)	
ASHOK SINGH AND ANR.		...Petitioner
	Versus	
STATE OF HARYANA AND OTHERS		...Respondents
(10)	CWP-5613-2022 (O&M)	
ASHOK KUMAR		...Petitioner
	Versus	
STATE OF HARYANA AND OTHERS		...Respondents
(11)	CWP-5615-2022 (O&M)	
KRISHAN KUMAR		...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

(12)

CWP-5756-2022 (O&M)

SURJIT SINGH

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLR MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Jagdish Manchanda, Advocate
for the petitioner (in all cases).

Mr. Pradeep Parkash Chahar, DAG, Haryana

Ms. Rajni Gupta, Advocate for respondent No.6-M.C.
(in all petitions except CWP Nos.4951 & 5580 of 2022).

SURESHWAR THAKUR, J. (ORAL)

1. That the petitioners became aggrieved from the concurrently made orders of eviction against them by the Statutory Authorities concerned. Therefore, the petitioners filed thereagainst CWP-9790-1995 along with other connected cases. Through an order made thereons on 03.07.2013, this Court though affirmed the concurrently made orders of eviction against the petitioners, by the Statutory Authorities concerned, yet keeping in view that the petitioners therein were belonging to weaker section of society, and, besides keeping in view the fact, that they had raised constructions, on the disputed lands, thus, this Court in terms of Section 5 of the The Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana) (hereinafter referred to as “the Act”), provisions whereof are extracted hereinafter, did rather made directions to

the Deputy Commissioner, Kurukshetra to get the market value of the lands assessed, and, to convey such assessed market values to the petitioners.

“5. Regulation of use and occupation, etc of lands vested or deemed to have been vested in Panchayats-

(1) All lands vested or deemed to have been vested in a Panchayat under this Act, shall be utilised or, disposed of by the Panchayat for the benefit of the inhabitants of the village concern in the manner prescribed.

Provided that where two or more villages have a common Panchayat, Shamilat deh of each village shall be utilised and disposed of, by the Panchayat for the benefit of the inhabitants of that village.

Provided further that where there are two or more Shamilat tikkas in a village, the Shamilat tikka shall be utilised and disposed of, by the Panchayat for the benefit of the inhabitants of that tikka.

[Provided further that where the cultivable area of land in Shamilat deh of any village, so vested or deemed to have been vested in panchayat is in excess of two-thirds of the total of that village (excluding abadi deh). Then cultivable area upto the extent of two-thirds of such total area shall be left to the Panchayat and one-half of the remaining cultivable area of Shamilat deh, shall be utilised for the settlement of landless tenants any other tenants ejected or to be ejected of that village and the remaining cultivable area shall be utilised for distribution to small land owners of the village by the collector in consultation with the Panchayat, in such manner as may be prescribed].

(2) The area of Shamilat deh to be utilized for the purposes of the third proviso to sub-section (1) shall be demarcated by such officer in consultations with the Panchayat and in such manner as may be prescribed.

(3) The State Government or any officer authorised by it in this behalf may, from time to time, with a view to ensuring compliance with the provision of the second proviso to sub-section (1) or sub-section (2) issue to any panchayat such directions as may be deemed necessary.

(4) Nothing contained in the third proviso to sub section (1) and in sub-section (2) and sub-section (3) shall apply to the "Hilly area".

(5) Notwithstanding anything contained in the prereceding sub-sections, on land vested or deemed to have been vested in the panchayat under this Act, shall be disposed of by way of sale, gift or exchange, so as to have with the Panchayat, cultivable area which is less than fifty percent of the total cultivable area vested or deemed to have been vested in the Panchayat].”

2. Furthermore, a direction was made in the operative part of the said verdict, that after an intimation of the said determined market values of the lands concerned, to the petitioners therein, they shall within one month thereafter make deposit(s) thereof, with the Gram Panchayat concerned. In addition, a further direction was made, that if any amount is so deposited by petitioners, and, is not refunded, rather is lying deposited with the Gram Panchayat concerned thereupon it be adjusted against the price of the lands.

3. However, the aggrieved therefrom petitioners including the present petitioners instituted Special Leave Petition (Civil) No.3979-4010-2015 before the Hon’ble Apex Court. The said grievance appertained to this Court directing the D.C. Kurukshetra to assess the sale prices but yet in consonance with the prevalent apposite market value.

4. The Hon’ble Apex Court decided the said SLP (supra) but with the hereinafter extracted directions.

“It is contended by Mr. Neeraj Kumar Jain, learned senior counsel appearing for the appellants that the appellants are in possession of land for a long period and the aforesaid directions by the High Court will break them financially and they will not be in a position to take a stand. The said stance of Mr. Jain was seriously controverted by Mr. Ajay Bansal, learned Additional Advocate General for the State of Haryana. Mr. Jain, learned senior counsel would also further contend that the State Government, at one point of time, had formulated a policy with regard to settlement of this

land at certain price. We do not intend to say anything about the said policy. Suffice it to direct the Government that the amount shall be collected as per the policy, if it is invoked. When we say so, it also means the entitlement of the appellants to be governed by the policy. The price determination shall be intimated to each of the appellants, which shall be paid within a period of three months therefrom. It is, however, made clear that the price determination should be treated as final, as these kinds of litigations are not to be allowed to continue in Courts. If the appellants are really interested to retain the possession, they must pay the amount, failing which they shall be evicted as per law.

In view of the aforesaid, the appeals are allowed to the extent indicated above. There shall be no order as to costs.”

5. A reading of the hereinabove extracted directions, makes it crystal clear, that the Government of Haryana was directed to, in terms of the policy concerned, permit the sale of the disputed lands to the petitioners concerned, but at a certain price. However, the Hon’ble the Apex Court did not deem it fit to quash, the said policy nor did it made any comments about the validity of the said policy. Therefore, but obviously the policy concerned, was upheld by the Hon’ble Apex Court. Undisputedly the policy as prevalent, at the stage of the decision (supra) being made by the Hon’ble Apex Court, hence was the policy of 2016.

6. Moreover, a further direction was made that as, and, when the policy is invoked, thereupon the petitioners’ claim for theirs becoming entitled, to the benefit of the said policy rather would become determined, and, also the price so determined shall be intimated to each of the petitioners. Moreover, the said determined price was directed to be deposited within 3 months therefrom, hence by the petitioners concerned. Pertinently, the said price determination was ordered to be treated to be final so as to curb the spate of litigations which may

erupt, in pursuance to the said price determinations as made by the Competent Authorities concerned.

7. The grievance raised before this Court by the learned counsel, for the petitioners, is confined to the factum, that since in terms of the judgment of the Hon'ble Apex Court drawn in the year 2017, the petitioners had moved an application before the Gram Panchayat concerned, on 07.12.2017, application whereof is comprised in Annexure P-7. Therefore, the price determination was to be made in terms of the policy of 2016, and, was not to be made on anvil of the policy of 2021.

8. Moreover, he also submits that since he had also deposited in 1992 the sale price before the Gram Panchayat concerned. Therefore, any demand of monies from the petitioners by the Competent Authority but in terms of the policy of the year 2021, policy whereof, speaks about price determination being made in terms of market values of the disputed lands, rather may not become the relevant tenable parameter(s) rather for making(s) of price determinations of the disputed lands.

9. The above made argument by the learned counsel for the petitioner is extremely meritworthy, and, is liable to be accepted, as the law declared by the Hon'ble Apex Court in the verdict (supra), does but clearly speak, about the price determinations being made in terms of the policy, which was in prevalence at the time when the Hon'ble Apex Court drew Annexure P-4, policy whereof then is the policy of 2016.

10. However, the petitioners had in the year 1992 also made deposits of the sale price pertaining to the petition lands before the Gram Panchayat concerned. It appears that the said deposit was made in terms of the policy concerned, which was in existence at that time. However, it also appears that subsequently during the pendency of the SLP (supra), before the Hon'ble Apex

Court rather a policy was drawn in the year 2016. Thus since the policy of 2016 when hence is upheld by the Hon'ble Apex Court, resultantly, the same becomes the norm for making the price determinations in respect of the sale of the petition lands to the petitioners herein.

11. A perusal of the policy drawn in the year 2016, is, embodied in Annexure R-1, relevant Clause 4 of the policy becomes extracted hereinafter.

“4. (1) In case of sale/lease by allotment, the sale price/premium shall be the market price to be determined by the State Government, on the recommendation of the Deputy Commissioner:

Provided that the State Government may fix the sale price/premium less than the market price for allotment of a site/building under rules 8(2), 8(3) and 9(1) by recording reasons in writing:

(2) In the case of sale/lease by auction, the sale price/premium shall be the reserve price or any higher price/premium determined as a result of bidding in open auction.

(3) Development charges as fixed by the State Government from time to time shall also be levied alongwith sale price/premium.”

12. Moreover, a perusal of the proviso underneath Clause 4, does reveal, that it speaks about the methodology to be adopted for fixing the sale price, besides but makes open speakings that the sale price is to be less than the market price, for allotment of a site/building under rules 8(2), 8(3) and 9(1) but by recording reasons in writing.

13. Undisputably the petitioners had made deposit of the sale price concerned, but in the year 1992, and though this Court had directed the petitioners to make deposit of the market value of the petition lands. However, as stated above, since the Hon'ble Apex Court had revered the policy of 2016, policy whereof, does but in the above manner, prescribe the methodology for determination of the price of the petition lands, methodology whereof, rather

does not make any underlinings, with respect to the sale determinations, being made in consonance with the market price for allotment of a site/building under rules 8(2), 8(3) and 9(1). Contrarily when the said methodology makes speakings about the government being empowered through recording reasons, assess the apposite sale price/premium, at rates, but lesser than the market value for the allotment of site/building under rules 8(2), 8(3) and 9(1), reiteratedly but by recording reasons in writing.

14. Therefore, obviously the direction, as made by this Court, upon the petitioners to make deposit of the market value of the petition lands, when became impugned before the Hon'ble Apex Court, thus resulting in the Hon'ble Apex Court rather revering the above drawn policy of 2016 besides it making the hereinabove extracted directions. Therefore, at this stage, it may not be appropriate for the respondents concerned, to insist upon the petitioners to deposit the market value of the petition lands, and, that too which relates to the year of theirs rather making an application before the Authorities concerned.

15. It is also important to emphasise upon the factum, that in the year 1992 the petition lands fell within the jurisdiction of the Gram Panchayat concerned, and, only after the creation of the Municipal Committee, Ismailabad, that the said lands became transferred to the jurisdiction of Municipal Committee concerned. Therefore, as of now the policy of 2016, as, upheld by the Hon'ble Apex Court, irrespective of the fact, that the petition lands have fallen to the jurisdiction of the Municipal Committee concerned, is yet to be applied. Even otherwise there is no contest on the part of the learned counsel for the Municipal Committee concerned, that if the petitioners make an application in terms of the policy, the same shall be considered. However, the prayer before this Court by the learned counsel of Municipal Committee concerned, is confined, to the factum, that the regulatory norm for making price

determination(s), is not comprised in the policy of 2016, but is comprised in the policy of 2021.

16. However, for the reasons to be assigned hereinafter, the above argument is rejected. Primarily for the reason that since at the time when the Hon'ble Apex Court drew verdict (supra), on the SLP (supra), rather then, the policy of 2016 was in vogue, and, also when the above extracted directions were made to the unauthorized occupants concerned, to rather invoke the said policy. Therefore, obviously the policy of 2016 as becomes spoken by the Hon'ble Apex Court, is the relevant policy, rather for all purposes inclusive of the one relating to the determination of sale price of the petition lands.

17. In consequence, the petition is disposed of with a direction to the petitioners to immediately make an application in terms of the said policy, and, the said application shall be lawfully considered, and, decided in terms of the policy of 2016. Moreover, the sale price, if any, already deposited, shall be adjusted towards the price determinations to be henceforth made by the Municipal Committee concerned. In addition, the Municipal Committee concerned, is restrained from drawing any coercive action against the petitioners but only till a decision is made upon the petitioners' application.

18. Disposed of accordingly.

19. A photocopy of this order be placed on the file of other connected case(s).

20. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

10.04.2023

Ithlesh

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No

(KULDEEP TIWARI)
JUDGE