

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

**CWP No.17022 of 2017(O&M)
Date of Decision: 20.04.2023**

Mohinder Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. S.S.Salar, Advocate for the petitioner.
Mr. V.G.Jauhar, Addl.AG, Punjab.
Mr. Kanwardeep Singh, Advocate
for Mr.S.S.Narula, Advocate for respondent No.2.

HARPREET SINGH BRAR, J.

1. Petitioner has approached this Court with a prayer for issuance of a writ in the nature of Certiorari for quashing of the order dated 05.04.2017 (Annexure P-3) vide which the claim of the petitioner for allotment of a plot as 'Local Displaced Person' (LDP) has been rejected. The petitioner has further sought issuance of a direction to Improvement Trust, Ludhiana to allot a plot to which she is entitled to under the Rules.
2. Brief facts of the case are that Late Sh. Attar Singh, who happened to be the grandfather-in-law of the petitioner, was the owner of land measuring 12 K-3M being 1/3 share of the land, comprised of khasra

No. 474/591, 482/601, 490/614 and killa No. 64//9/1, 10/2, 11/2, 12, in village Sunet. This land was acquired vide a Notification issued under Section 42 of the Punjab Town Improvement Trust Act, 1922 (hereinafter referred to as 'the 1922 Act' for short) on 28.06.1979. The award was passed, and the land was acquired for 475 Acre Shaheed Bhagat Singh Nagar Development Scheme. Being eligible for allotment of a plot, Sh. Attar Singh applied for the same on 12.05.1982 vide application (Annexure P-1). Above said Attar Singh bequeathed his entire estate in favour of his two daughters-in-law i.e. the petitioner and Beant Kaur, vide Will dated 12.10.1984. Sh. Attar Singh died in the year 1985. Being legal representatives of Sh. Attar Singh, the petitioner along with Beant Kaur are entitled for allotment of a plot under 'Local Displaced Person' category under the Utilisation of Land and Allotment of Plots by Improvement Trust Rules, 1975 (hereinafter referred to as 'the 1975 Rules' for short) which were prevailing at the time of acquisition of land in 1979. Despite being eligible as the legal representative of Sh. Attar Singh, the plot was not allotted to the petitioner.

3. The petitioner had earlier approached this Court with a prayer to direct the Improvement Trust, Ludhiana to consider her case and decide on her representation. A Division Bench of this Court, vide order dated 21.03.2016 passed in CWP No. 5326 of 2016 (Annexure P-2), directed the respondents to consider the representation of the petitioner dated 14.12.2014. The Improvement Trust rejected the claim of the petitioner by passing a speaking order dated 05.04.2017 (Annexure P-3). Now the petitioner has approached this Court seeking quashing of order dated

05.04.2017 (Annexure P-3) and for allotment of a plot as 'Local Displaced Person'.

4. Learned counsel for the petitioner has contended that respondent No.2 has rejected the case of the petitioner in a discriminatory manner and, she has claimed parity with the similarly situated 'Local Displaced Person' in the same scheme by placing reliance on Annexures P-5 to P-7. Similarly, Pritam Kaur Grewal and others approached this Court for allotment of a plot being 'Local Displaced Person' in accordance with the provisions of the 1975 Rules. The above writ petition filed by Pritam Kaur Grewal and others was allowed vide order dated 07.10.2016 (Annexure P-8) passed in CWP No. 2190 of 1984.

5. Learned counsel for the petitioner has further submitted that the case of the petitioner had been rejected whereas the claim of Buta Singh and Jagtar Singh, who had applied under the LDP category and who had also not deposited the earnest money with the Improvement Trust, Ludhiana, had been accepted vide orders dated 17.08.2015 (Annexures P-9 and P-10, respectively). In the speaking order referred to above, passed by the Improvement Trust, Ludhiana (respondent No.2), it had been specifically held that said Buta Singh and Jagtar Singh were eligible for allotment and they were directed to deposit the earnest money. It has further been argued by learned counsel for the petitioner that there are no rules, instructions or statutory provisions which require a 'Local Displaced Person' to deposit the earnest money before seeking allotment of plot. Reliance is also made on Annexures P-11 to P-25 where the Improvement Trust, Ludhiana had

accepted the claim of similarly situated Local Displaced Persons and allotment of plots was made to them.

6. On the other hand, learned counsel representing the Improvement Trust (respondent No.2) has submitted that the claim of the petitioner has rightly been rejected by passing a well-reasoned speaking order (Annexure P-3). The petitioner or any of the legal heirs of Sh. Attar Singh whose land was acquired by the Improvement Trust, Ludhiana under the 475 Acre Development Scheme, has never applied for allotment of plot under the LDP category and an oustee is only entitled for allotment of plot under the scheme if he makes an application and deposits the earnest money. He has placed reliance on the judgment passed by the Hon'ble Supreme Court of India in the case of ***Jalandhar Improvement Trust vs. Sampuran Singh and others reported as 1999(2) RCR(Civil) 568***. Learned counsel for respondent No.2 has vehemently argued that no relief can be granted to a party who is guilty of delay and laches and kept sitting on the fence, waiting to seek advantage of the turn of events. In the written statement filed by respondent No.2, a specific stand was taken that 1975 Rules are not applicable in the case of the petitioner as the 1975 Rules are replaced by the Punjab Town Improvement (Utilisation of Land and Allotment of Plot) Rules, 1983 (hereinafter referred to 'the 1983 Rules' for short). The 1983 Rules came into force before the possession of the land owned by Sh. Attar Singh was taken by the Improvement Trust, Ludhiana in 1984. As per these Rules, an oustee has three years to apply for allotment of plot from the date of possession. As such, learned counsel for Improvement Trust, Ludhiana (respondent No.2) asserts that in the light of the above Rules, the case of the

petitioner is hopelessly time barred. Moreover, petitioner Mohinder Kaur as well as Beant Kaur became the legal heirs of deceased Sh. Attar Singh on the basis of Will dated 12.10.1984 but there is no application made by Beant Kaur and only the petitioner has applied for allotment of plot. As such, on the ground of mis-joinder of parties, the present writ petition is liable to be dismissed.

7. We have heard the counsels for the parties and have gone through the record carefully. We are satisfied that the claim of the petitioners is required to be accepted on the following ground:

Undisputedly, the land measuring 3K-13M (1905 sq.yds.) out of Khasra No.64//9/1, 10/2, 11/2, 12 of village Sunet owned by Sh. Attar Singh was acquired by Ludhiana Improvement Trust vide Notification dated 02.07.1976 under Section 36 and vide Notification dated 28.06.1979 under Section 42 of the 1922 Act.

8. Learned counsel for the petitioner has contended that the petitioner gave representation dated 12.05.1982, reminders on 19.06.2001, 24.07.2004, 06.06.2006, 18.09.2006, 05.01.2009, 16.04.2011 and 15.06.2012 to Improvement Trust, Ludhiana (respondent No.2) for allotment of plot under LDP category whereas respondent No.2 has specifically denied that no such representation or application from the petitioner was received. Be that as it may, as far as the reliance by the petitioner on Annexures P-4 to P-6 and the judgment of the Division Bench of this Court dated 08.10.2012 (Annexure P-7), as also judgment dated 27.10.2016 (Annexure P-8) is concerned, no specific rebuttal is forthcoming on behalf of the Improvement Trust, Ludhiana (respondent No.2). Same is the situation with regard to the

claim of the petitioner that similarly situated persons vide Annexures P-11 to P-25 were allotted plots by the Improvement Trust, Ludhiana (respondent No.2). A feeble attempt was made by the Improvement Trust, Ludhiana (respondent No.2) to justify the rejection of the claim of the petitioner vide Annexure P-3 on the ground that the 1975 Rules were not applicable in the case of the petitioner and, as per the 1983 Rules, the claim of the petitioner is time barred as a period of three years is provided under the 1983 Rules for seeking allotment of plot by oustee under the LDP category, has elapsed.

9. A Division Bench of this Court, in a bunch of petitions, had the occasion to examine the case of the oustees who were denied allotment of plots on the ground that they did not apply along with the earnest money within the prescribed period. The Division Bench, while directing the Improvement Trust, Ludhiana vide order dated 08.10.2012 (Annexure P-7) passed in CWP No. 1603 of 2012 to re-determine the claim of the oustees, has relied upon the decision of this Court in ***Improvement Trust Ludhiana Vs. Joginder Singh and others, 2012 SCC Online P&H 15781*** decided on August 30, 2012 and held as follows:

“The question whether a Local Displaced Person can be denied allotment of the plot only on the ground of delay in approaching the appellant-Improvement Trust has been gone into and answered in favour of the Local Displaced Persons by two Division Benches of this Court in CWP No. 6801 of 2000 (Surjit Kaur and others Vs. State of Punjab and another) decided on 2.11.2000 and CWP No. 17248 of 1999 (Gurdev Kaur and others Vs. State of Punjab and another) decided on 25.4.2001 (Annexures P-13 and P-14 respectively). That apart, the private respondents have successfully proved on record that other Local Displaced Persons who too deposited earnest

money with them in the year 1990 have been allotted plots vide orders of different dates(Annexures P-18 to P-39).”

The delay caused in approaching the Improvement Trust thus should not work to the disadvantage of LDP if he is otherwise entitled to allotment of a plot under the Rules, for no serious prejudice is likely to be caused to the Trust as the petitioner(s) would be entitled to allotment at the current reserved price only.”

As such, the stand of Improvement Trust (respondent No.2) that the claim of the petitioner is liable to be rejected on the ground of delay and laches, does not survive. This issue already stands settled by the Division Bench of this Court in the above-mentioned decisions.

10. One of the issues which is raised in the present writ petition which requires adjudication is as to whether the claim of the petitioner can be dislodged on the ground that the case of the petitioner is covered by the 1983 Rules. In the case of ***Pritam Kaur and others vs. The Improvement Trust, Ludhiana, 2017(3) RCR (Civil) 714***, the Division Bench of this Court has considered the claim of the allottees whose land was acquired when the 1975 Rules were holding the field. In that case it was observed as follows:-

“Thirdly, the 1983 Rules were notified on 22.12.1983 and Rule 1(2) of these Rules expressly states that ‘they shall come into force at once’. These Rules are prospective, without any retrospective effect. Fourthly, the cause action to seek allotment accrued in favour of the petitioners on or immediate after 09.11.1976 as with the acquisition of their land, they fell in the category of ‘Local Displaced Person’, as defined in Rule 2(a) of the 1975 Rules. We, thus, hold that claim of the petitioners has to be determined under the 1975 Rules only.

[13] *Adverting to the Scheme of 1975 Rules, the plea taken by the Trust to dislodge the petitioners' claim is that their residential house measuring 1667 sq.yds. has already been exempted from acquisition, therefore, they cannot claim the status of 'Local Displaced Persons'. This objection of the Trust, in our considered view, cannot sustain in view of the Hon'ble Supreme Court decision in **Jaidev Inder Singh vs Amritsar Improvement Trust, 2016(4) SCC 599**. The Hon'ble Supreme Court considered the definition of 'Local Displaced Person' as given in the 1975 Rules in the cited decision and has viewed that the said expression 'has to be understood with reference to the acquisition concerned'. The objection that once a land owner is allotted plot as a 'Local Displaced Person' in lieu of the first acquisition of his property alone would determine his status as a 'Local Displaced Person' at the subsequent stage also, has been rejected. To say it differently, the status as a 'Local Displaced Person' under the 1975 Rules is acquired on the acquisition of one's property 'by the Trust for execution of its Scheme', provided that such person was owner for a continuous period of two years immediately before publication of first notification to initiate the acquisition process.*

[14] *The definition of 'Local Displaced Person' under the 1975 Rules read with its interpretation given by the Hon'ble Supreme Court in the cited decision leaves no room to doubt that as soon as the petitioners' property acquired by the Trust for execution of the Scheme in question, they acquire the status of 'Local Displaced Person' under the 1975 Rules. By virtue of that status, the petitioners were entitled to be considered for allotment of plots 'upto the size of 500 sq.yds', for admittedly the area of the acquired land which was owned by each one of them was more than 500 sq.yds."*

11. Keeping in view the facts and circumstances of the case, we find that the action of the Improvement Trust (respondent No.2) is discriminatory, arbitrary and it violates Article 14 of the Constitution of India. When similarly situated person under the same scheme were allotted plots under 'Local Displaced Persons' category vide Annexures P-11 to P-25 by respondent No.2 thus, the petitioner on the ground of equality was also entitled to allotment of the plot under the above said scheme. The Hon'ble Supreme Court in ***F.C.I. v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71 at 76***, has observed the following:-

"In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non- arbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'."

The Hon'ble ***Supreme Court in Union of India vs Hindustan Development Corporation, (1993) 3 SCC 499 at 515***, has held thus:

*".....the Government had the right to either accept or reject the lowest offer but that of course, if done on a policy, should be on some rational and reasonable grounds. In ***Erusian Equipment & Chemicals Ltd. v. State of W.B. AIR 1975 SC 266*** this Court observed as under:*

"(17) When the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions". The activities of the Government have a public element and, therefore, there should be

fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure.”

12. In view of the settled position, we are of the considered view that the case of the petitioner has to be determined under the 1975 Rules. Therefore, the stand of the Improvement Trust, Ludhiana (respondent No.2) with regard to the applicability of the 1983 Rules in the case of the petitioner, is liable to be rejected. The Improvement Trust, Ludhiana (respondent No.2) has relied upon the proviso to Rule 4 (2) of the 1983 Rules to seek dismissal of the writ petition on the ground that only the petitioner has applied for allotment of plot whereas Beant Kaur is also surviving legal heir of Attar Singh along with the petitioner and they both are entitled to allotment of one plot having a joint *Khata* being co-sharers under the ‘Local Displaced Persons’ category. The proviso to Rule 4 (2) of the 1983 Rules provides that Local Displaced Persons having a joint *Khata* being co-sharer shall be allotted one plot. The above objection by respondent No.2 cannot sustain as the case of the petitioner is not covered by the 1983 Rules and Rule 7 (ii) of the 1975 Rules provides that each one of them independently qualifies the eligibility condition for allotment of a plot under the ‘Local Displaced Person’ category. As such, the petitioner independently is entitled to seek allotment of plot under Rule 7(ii) of the 1975 Rules.

13. For the reasons recorded here-in-above, the writ petition is allowed and the impugned order dated 05.04.2017 (Annexure P-3) is set aside. The petitioner is entitled to allotment of plot in the manner as was directed in the cases of *Monti Roy* (supra) and *Pritam Kaur* (supra)

(Annexure P-7 and Annexure P-8, respectively). The case of the petitioner is covered squarely “on all fours” by the judgments Annexures P-7 and P-8. Let the needful be done within a period of three months from the date of receipt of a certified copy of this order.

14. Pending application(s), if any, shall also stand disposed of.

(AUGUSTINE GEORGE MASIH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

20.04.2023

sunita

Whether Reasoned/Speaking : Yes/No

Whether Reportable : Yes/No