

131 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23495-2025 (O/M)

Date of decision : 09.12.2025

Suresh Chand Bhatia

..... Petitioner

Versus

The Commissioner (Sales)-cum-Deputy Commissioner,
Faridabad Division, Faridabad and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Gaurav Sharma, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Prayer in this civil writ petition filed under Article 226 of Constitution of India, inter alia, is for issuance of a writ in the nature of certiorari for setting aside order dated 17.12.2024 (Annexure P-6), passed by learned Deputy Commissioner, Faridabad (in short 'Deputy Commissioner') and order dated 04.06.2025 (Annexure P-7), passed by learned Commissioner, Faridabad Division, Faridabad (in short 'Divisional Commissioner').

2. Briefly, petitioner claims that he alongwith one Shri Jagannath and Dunni Chand was owner of House No. 5E/69, NIT, Faridabad, measuring 233 sq. yards. Petitioner claims that there was a piece of land (41.65 sq. yards) adjoining the above referred house of petitioner. Petitioner further claims that said piece of land has been in his possession for the last more than 60 years. Petitioner also claims that he had got installed an electricity connection in his name from Haryana State

Electricity Board and in support of the same, he has placed on record copy of electricity bill (Annexure P-1). It is claimed that said electricity connection is separate from the house of petitioner and the same is still working.

2.1 It is the case of petitioner that Haryana Government had in the year 2011 framed rules, namely, Haryana Evacuee Properties (Management and Disposal) Rules, 2011 (in short '2011 Rules') under the provisions of Haryana Evacuee Properties (Management and Disposal) Act, 2008 (in short '2008 Act'). It is asserted that in terms of Rule 8 of 2011 Rules, if any person is in continuous possession of any evacuee land from January 2001 or before that date, he may move an application for transfer of such land. It is stated that in terms of aforesaid Rule 8 of 2011 Rules, the petitioner submitted an application before Tehsildar (Sales), Faridabad, seeking transfer of above referred piece of land, measuring 41.65 sq. yards, which was adjoining to the house of petitioner and also placed relevant documents in support of his claim; whereupon the concerned Tehsildar visited the spot and thereafter directed the petitioner to deposit the entire amount of sale consideration, vide order dated 01.01.2016 (Annexure P-4). The petitioner is stated to have deposited the entire amount and sale deed/transfer deed dated 18.03.2016 (Annexure P-5) is stated to have been issued.

2.2 It transpires that respondent No. 4 (Devesh Kapoor) challenged the order dated 01.01.2016 (Annexure P-4) by filing an appeal before learned Deputy Commissioner, Faridabad, who vide an order dated 14.03.2023, appointed Sub Divisional Magistrate, Badkhal as a Local Commissioner to submit a report in the matter, who in turn

submitted his report and on that basis, the appeal filed by respondent No. 4 (Devesh Kapoor) came to be allowed, vide order dated 17.12.2024 (Annexure P-6) and allotment of property in question to the petitioner was cancelled.

2.3 Feeling aggrieved against order dated 17.12.2024 (Annexure P-6), petitioner preferred an appeal before learned Divisional Commissioner, which has been dismissed, vide order dated 04.06.2025 (Annexure P-7).

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition before this Court for seeking relief(s), as notice hereinabove.

4. Heard.

5. Apparently, petitioner applied for allotment of piece of land, measuring 41.65 sq. yards in terms of Rule 8 of 2011 Rules, the relevant extract of which reads as under :-

“8. (1) An application for transfer of land by an occupant or his successor-in-interest who is in continuous cultivating possession of any land from 1st January, 2001 shall be made to the Tehsildar concerned alongwith 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 verification of eligibility from the relevant documents including entries in the revenue record, if any, that the evacuee land in question was in possession on or before the 1st January, 2001 and still is in his continuous possession as on the date of scrutiny of the

case, shall make an order for transfer of land at market price, preferably within a period of four months, if the applicant is otherwise eligible. The order so passed by him shall be subject to approval by the Commissioner (Sales).

(3) Market price of the land shall be the current market price which shall be the average price in respect of a similar land on the basis of sale transactions in concerned revenue estate or locality or area or its vicinity during the preceding one year or the collector rate determine by the Deputy Commissioner concerned for similar category of land in same revenue estate or locality or area or its vicinity, whichever is higher.

(4) Notwithstanding anything contained in these rules, evacuee land recorded as gair mumkin rasta, johar, pond, public latrine, drains, shamshan ghat, roads, street, park, river, nala, nadi and other similar other categories of land which are being used for public purpose and the land made available due to river action shall not be transferred to its occupant and the same shall be transferred to the concerned gram panchayat or municipality, as the case may be, free of cost subject to the condition that it shall not be transferred further to anyone by the said gram panchayat or municipality, as the case may be.

(5) Any piece of land not exceeding two acres surrounded by the land of one person and having no approach which can not be disposed of in any other manner shall also be transferred to that person at the market price although the same may not be under his possession :

Provided that the Tehsildar may ignore stray entries made in the revenue record as per instructions issued in the department :

Provided further that the Tehsildar shall provide an opportunity of being heard to anyone concerned if there is

a dispute regarding possession or someone makes an objection against the claim made by the applicant.

(6) Where any evacuee land not exceeding two acres is surrounded by the land of more than one person then it shall not be transferred to any of them but shall only be auctioned.

(7) 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 has been found to be corrected after coming into force of the Act, or any evidence has been found to be fabricated one, Tehsildar shall refer the case to the Commissioner (Sales) for decision, who after holding such an enquiry, as he may deem fit, shall pass the appropriate order.

(8) The occupant shall also be liable to pay use and occupation charges which shall be equal to twenty percent of the price of the land for entire period and the same shall be deposited in addition to the price of the land and such charges once deposited shall not be refunded in any case.

(9) In case where an occupant of the land has died after making an application, Tehsildar shall proceed with the determination of the eligibility as if the legal heir of the deceased were the occupants.

(10) After realization of full amount, the conveyance deed shall be issued by Tehsildar in Form IX.

(ii) Where the Tehsildar is satisfied that the applicant is not eligible, he shall reject the application after affording an opportunity of being heard to the applicant. The Tehsildar shall initiate eviction proceedings against the applicant and dispose of the land.”

5.1 It appears that the application for allotment of aforesaid piece of land was processed by the concerned Tehsildar, vide order dated 01.01.2016 (Annexure P-4) by observing as under :-

“According to the same report and the attached site map, the measurement of the occupied land at the site was found to be accurate. I have personally inspected this plot, and as per site condition, the applicant has constructed a permanent structure on the occupied land, as shown in the attached map. Based on the record submitted by the applicant and site verification, it is established that the applicant is the owner of the House no. 5-E/69, NH-5 NIT, Faridabad and has possession of the adjoining land (total area 41.65 sq. yds.) since before 01.01.2001.

As per the section 8 (3) of the 2011 Rules, the average auction price of the last year and the collector rate for 2014-2015, the rate of residential plots up to 500 square yards in NH-5 was Rs. 22000/- per sq. yards, as per the Sub-Registrar Faridabad's letter No. 94551 dated 17.10.2014 the average auction price was Rs. 25,469.75 per square yard. Based on these facts and the site the applicant is eligible for the transfer of the 41.65 square yards of land located in NH-5, NIT, Faridabad under Rule 10 of the Haryana Evacuee Property (Management and Disposal) Rules, 2011. Since the average auction price is higher than the Collector Rate the adjoining land 41.65 square yards of House No. 5-E/69 NIT Faridabad is transferred to Shri Suresh Kumar resident of House No. 5-E/69 NIT Faridabad at a rate Rs. 25,479.75 per square yard amounting to a total price of Rs. 10,68,366/- under the said rule. This transfer order is subject to approval by the Commissioner (Sales), Faridabad. The total sale consideration of this land is Rs. 10,61,250/- and 20% of which has been paid as Rs. 2,12,250/- (rupees two lakh twelve thousand two hundred fifty). This amount should be deposited within 30 days from the date of this transfer order. After approval the payment must be made in accordance with the Rules 2011.”

5.2 The aforesaid order dated 01.01.2016 (Annexure P-4) was challenged by respondent No. 4 (Devesh Kapoor) by filing an appeal before learned Deputy Commissioner, Faridabad, which has been allowed, vide order dated 17.12.2024 (Annexure P-6) and allotment in favour of petitioner was set aside by observing as under :-

“6. I have heard both the parties at length and during the course of arguments, for the proper adjudication, the Court deemed it proper to appoint a Local Commissioner to know about the factual position of the house in question and regarding transfer of the disputed land, and therefore, Sub Divisional Magistrate, Badkhal was appointed as Local Commissioner vide order dated 14.03.2023 and to submit detailed report before the Court.

Thereafter, Sub Divisional Magistrate, Badkhal who was appointed as Local Commissioner, submitted his following report on 22.08.2023 :-

“After taking into consideration all the facts of the case as well as the documents produced by Sh. Devesh and Sh. Jagan Nath Bhatia and after hearing both the parties, I have come to the conclusion that Sh. Suresh Chand Bhatia and Sh. Duni Chand Bhatia have produced their documents in support of their application dated 30.04.2014 regarding House No. 5E/69 and all the documents have been produced in the name of Sh. Jagannath Bhatia and others. Sh. Jagannath Bhatia produced an affidavit to the effect that his both the brothers have already sold their shares in the land in House no. 5E/69 and got the land registered in their names after producing the documents of his name (Jagannath Bhatia). Sh. Suresh Chand through GPA has already sold his share in the year 2000 and Sh. Duni Chand has already sold his share in the year 2008 before moving the application.”

7. Perusal of the file shows that the parties have failed to prove their possession over the property in question as they have not produced any document during the period from 2001 till the date of scrutinization of the application as per Rule 8 sub rule (2) of Haryana Evacue Properties

(Management and Disposal) Rules, 2011. Further, Suresh Kumar had sold his share in House No. 5E/69 measuring 78 Sq. yds vide sale deed no. 9792 dated 04.09.2006.

Rule 8 sub rule (2) of Haryana Evacuee Properties (Management and Disposal) Rules, 2011 reads as under :-

*“The application so received by the Tehsildar shall be scrutinized by him **after verification of eligibility from the relevant documents including entries in the revenue record, if any, that the evacuee land in question was in possession on or before the 1st January, 2001 and still is in his continuous possession as on the date of scrutiny of the case,** shall make an order for transfer of land at market price, preferably within a period of four months, if the applicant is otherwise eligible. The order so passed by him shall be subject to approval by the Commissioner (Sales).”*

It is pertinent to mention here that when the respondent was not having ownership of the property in question then it is not possible that he was having continuous possession of adjoining land in question and hence, allotment of land in question in the name of respondents does not arise.

From the perusal of the report of Sub Divisional Magistrate, Badkhal, who was appointed as Local Commissioner it is clear that Sh. Duni Chand had already sold his share in House no. 5E/69 in the year 2008 before moving the application.

8. *Order dated 17.12.2015 and 01.01.2016 passed by the Tehsildar (Sales) Faridabad, reveals that he passed the impugned orders after perusing the relevant documents i.e. copy of conveyance deed dated 13.05.1987, electricity bills for the years 1967, 1970, 2013 & 2015 and copy of the site plan of the land in continuous possession and further it reveals that the Suresh Kumar and Dunni Chand were in continuous possession of the land measuring 41.65 sq. yds and 41.93 sq. yds. prior to 01.01.2001, respectively but all these bills pertain to House No. 5E/69 and not of the land*

in question i.e. the adjacent land and thus he has failed to prove the continuous possession over the property in question.

It is pertinent to mention here that as per section 2 (k) of the Haryana Evacuee Properties (Management And Disposal) Act, 2008 pertains to possession of the land in question and not the adjacent land and the land in question is adjacent to House no. 5E/69 and 5E/70.

It may also be mentioned here that the respondents have sold their respective share in House no. 5E/69 before moving the application.

The parties have failed to produce any document regarding the proof of possession of the land in question.

9. In the light of aforesaid observations and after hearing both the parties and going through the record of the case as well as the reports submitted by the Local Commissioner (Sub Divisional Magistrate, Badkhal), the parties have failed to prove and justify the possession over the land in question as per Rule 8 sub rule (2) on the date of scrutinization of the application.

Therefore, the impugned orders dated 17.12.2015 and 01.01.2016 have wrongly been passed by the Tehsildar (Sales) regarding allotment of property in question and the same are hereby cancelled.

Appeal file be consigned to record room and copy of this order be sent to the Tehsildar (Sales), Faridabad.”

5.3 A perusal of above extracted order, passed by learned Deputy Commissioner, Faridabad, would show that in order to inquire into the factual position as regards the claim of the petitioner for allotment of land, measuring 41.65 sq. yards of plot, learned Deputy Commissioner, Faridabad, had appointed Sub Divisional Magistrate, Badkhal, as a Local Commissioner; who submitted his report on 22.08.2023, wherein it was

reported that the petitioner (Suresh Chand Bhatia) and his brother Duni Chand Bhatia had produced documents in support of their claim regarding House No. 5E/69 and that all the documents were in the name of Jagan Nath Bhatia and others. Shri Jagan Nath Bhatia had submitted an affidavit that his both brothers i.e. petitioner-Suresh Chand Bhatia and Duni Chand Bhatia, had already sold their respective shares in House No. 5E/69 in the year 2000 and 2008, respectively and that they had got the land registered in their names after producing the documents of Jagan Nath Bhatia.

5.4 Keeping in view the aforesaid report, submitted by Sub Divisional Magistrate, Badkhal, and upon perusal of records, it was found as a matter of fact that the petitioner herein had not produced any document for the period from 2001 till the date of scrutinization of his application, submitted under Rule 8 of 2011 Rules, so as to prove his possession over the property in question. It has also come on record that petitioner had already sold his share in House No. 5E/69 before submitting application for allotment of land in question.

5.5 Upon considering the totality of circumstances, learned Deputy Commissioner, Faridabad, returned a finding that when the petitioner was not having ownership of property i.e. House No. 5E/69 then it is not possible that he was having continuous possession of adjoining piece of land and resultantly, there was no question of any allotment of the said land in his name. The reliance placed by the petitioner upon the electricity bills to prove his possession was also not accepted by learned Deputy Commissioner, Faridabad, by observing that all the said bills pertain to House No. 5E/69 and not in respect of adjacent

piece of land, regarding which the petitioner was seeking allotment under 2011 Rules. Since the petitioner had failed to prove his possession over the piece of land (regarding which he was seeking allotment) since 2001 upto the date of scrutinization of his application, accordingly, the allotment in favour of the petitioner was cancelled by learned Deputy Commissioner, Faridabad, vide order dated 17.12.2024 (Annexure P-6). The order dated 17.12.2024 (Annexure P-6) has been further affirmed by learned Divisional Commissioner, vide order dated 04.06.2025 (Annexure P-7).

6. During the course of hearing of this writ petition, learned counsel for petitioner was asked to refer to any material to show that the petitioner has been in possession of land in question, regarding which he was seeking allotment.

6.1 In response to aforesaid query, learned counsel for petitioner has only referred to electricity bill (Annexure P-1). Apart from the said electricity bill, no other material has been referred to by learned counsel for petitioner. As regards the aforesaid electricity bill, it has been found as a matter of fact that the said electricity bill pertains to electricity connection installed in House No. 5E/69.

6.2 Further, it has not been disputed by learned counsel for petitioner that petitioner had already sold his share in House No. 5E/69 and that on the date of scrutinization of his application, the petitioner had no share in House No. 5E/69.

7. In view of above, since petitioner has failed to prove his continuous possession over the land (regarding which he was seeking allotment) since 01.01.2001 upto the date of scrutinization of his

application; which is one of the conditions envisaged under Rule 8 of 2011 Rules, in my considered view, learned Deputy Commissioner, Faridabad, has rightly cancelled the allotment of plot, measuring 41.65 sq. yards to the petitioner.

8. No other argument was raised.

9. In view of the above discussion, this civil writ petition fails and same is accordingly, dismissed.

10. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

09.12.2025
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No