

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

C. W. P. No. 15724 of 2008

Date of Decision: 27 - 10 – 2009

Jaswant Rai

...Petitioner

v.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr.Gurcharan Dass, Advocate
for the petitioner.

Mr.Sunil Nehra, AAG, Haryana
for respondents No.1 and 5.

Mr.Raghujeet Singh Madan, Advocate
for respondents No.2 to 4.

KANWALJIT SINGH AHLUWALIA, J. (ORAL)

Present writ petition has been filed by Jaswant Rai who claim himself to be 72 years old. He seek quashing of order 18.11.2004, Annexure P8, passed by the Estate Officer, Haryana Urban Development Authority, Panchkula (hereinafter to be referred as, 'HUDA') by way of writ of certiorari whereby allotment of plot to the petitioner in his individual capacity has been denied and he has been held entitled to one plot jointly with his co-sharers, along with order Annexure P15 wherein Oustees

Adalat held on 13.8.2007 upheld the stand of the respondent-HUDA. The order passed by the Oustees Adalat held on 13.8.2007 read as under:-

“Sh.Jaswant Rai s/o Sh.Chanda Ram r/o H.No.508, Sector 38-A, Chandigarh, has submitted representation vide which he has claimed the plot under oustees policy in Sector – 21, Panchkula, against the acquired land measuring 4 bigha in Khasra No.2/1 and 4 Bigha in Khasra No.272. His claim had been considered by the Screening Committee on 12.03.04 and had been rejected. Further applicant again submitted a representation and his case was again put up before the Screening Committee on 11.07.06. The claim of applicant was examined and found that his claim had been wrongly rejected in the meeting held on 12.03.04 and found that the applicant was entitled for 10 Marlla plot in joint name of Sh.Dhanna Lal, Kirpi, Arjun Singh, Sarban Singh, Jagir Singh, Rup Lal, Sardar Singh, Jaswant Singh, Kullwant Singh, Surender Singh etc. as the applicant was co-sharer in the Khewat No.5. As per HUDA policy only one plot can be allotted. But the same had been rejected due to the reason that the Screening Committee was not empowered to review the case and a reference had already been made to worthy Chief Administrator, HUDA, Panchkula. But now as per order dated 29.11.06 the case has come up before Oustee's Adalat and the same has been considered.

Keeping in view the above said facts the applicant is eligible for 10 Marla plot in Joint name but at present no plot is reported to be available for allotment in Sector-21. Hence, the

Committee recommends that the applicant may be allotted a 10 Marla plot in Sector 21, availability and on completion of all formalities as per oustee's policy.”

Admittedly, land of the petitioner was acquired along with his relatives to whom respondents have termed as his co-sharers.

Two short questions which this Court has been called upon to answer, can be formulated as under:-

- (A) Whether in the facts and circumstances of the case, under the Oustee's policy, petitioner is to be considered co-sharer or not?
- (B) In case petitioner is considered co-sharer, whether he is entitled to allotment of plot individually in his name under policy of the department notified on 7.12.2007 or not?

To answer these questions, it will be necessary to advert to the facts of the case. It is pleaded in the writ petition that one Ghanyia Lal who was adopted son of Smt.Kirpi, was owner of a large chunk of land in Village Devinagar, Tehsil Kalka. Out of that large parcel of the land, he executed a gift deed in favour of the petitioner for 8 bighas. Copy of the gift deed has been annexed as Annexure P1. Gift deed was executed on 18.6.1981. A perusal of the gift deed reveal that 8 bighas of land falling in Khasra Nos.271 and 272 was gifted to the petitioner. Petitioner has relied upon jamabandi Annexure P2 to say that in the column of , Name of owner and description, contain a specific entry that Ghaniya Lal share-holder had donated by way of gift 8 bighas of land in favour of the petitioner falling in Khasra Nos.271 and 272. To further fortify this submission, the petitioner

has relied upon copy of the mutation register Annexure P2A wherein this land was mutated in the name of the petitioner on 28.12.1981.

Haryana Government issued a notification on 31.8.1987 under Section 4 of the Land Acquisition Act. The land was acquired for establishment of Sector 3, Urban Estate, Panchkula. In respect of the acquisition, Land Acquisition Collector, Directorate of Urban Estate Department Haryana, Panchkula made an award, whereby compensation was awarded. The award was pronounced on 27.3.1989 and has been annexed as Annexure P3. The award specifically contain an entry at No.148 at page 50 of the paper-book that two Khasra Nos.271 and 272 have been acquired. Counsel for the petitioner referring to the award has stated that while in entry No.19 various co-sharers have been considered together for giving compensation, his case was considered individually and not along with co-sharers as he was held entitled to the land in his own right.

In the present petition, petitioner has claimed that he is entitled to for allotment of 250 square yards plot under a policy of respondent-HUDA issued on 9.5.1990. This policy specify that any person whose land acquired is more than 1 acre, is entitled to a plot of 350 square yards. The policy has been annexed as Annexure P4. Petitioner submitted an application form for allotment of plot, Annexure P5. Along with the application form, he deposited Rs.89,996/-.

To say that petitioner is entitled to allotment of plot in his individual capacity and not as a co-sharer, reliance has been placed on Annexure P6, a communication addressed by the Land Acquisition Officer to the petitioner which mention that land has not been released from acquisition out of this Khewat and he is absolute owner of Khasra Nos.271

and 272 measuring 8 bighas and there was no share-holder in both these khasras. In support of this, further reliance has been placed on Annexure P7 which state that though Khewat No.5 contain khasras of the petitioner and others but the Khata of the petitioner was separate. Annexure P8 which has been assailed read as under:-

“It is intimated that since you are cosharer in released land of Gurukul Old Panchkula and as per HUDA Policy & decision of the Committee, you are not entitled for any plot under oustees quota. Hence your claim has been rejected by the Committee.”

Thereafter, petitioner represented. His case was considered by the Oustees Adalat, whose decision has already been reproduced above.

Contesting the claim of the petitioner, a counter affidavit was filed by Estate Officer, HUDA. In the preliminary objection, it was stated that revenue record was perused and report from the Land Acquisition Officer was requisitioned and after considering claim of the petitioner it was held that he was entitled to 10 Marlas plot jointly with his other co-sharers. Estate Officer, HUDA submitted that after examining the entire record, he came to the conclusion that petitioner is co-sharer in Khewat No.5, Khatauni No.42. Therefore, as per policy all co-sharers are entitled to one plot.

A written statement has also been filed on behalf of respondent No.5 – Land Acquisition Officer, in which it was stated that letters Annexures P6 and P7 were inadvertently sent, though he was owner in possession of land of 8 bighas. He was co-owner with other share-holders.

Mr.Gurcharan Dass appearing for the petitioner has stated that

once vide a gift deed 8 bighas of land forming part of Khasra Nos.271 and 272 was given to the petitioner, there was severance of relationship with his co-sharers. Counsel submit that to term any body as co-sharer, it is necessary that land should be ancestral in nature or petitioner should have some relationship with his co-sharers. This contention on the face of it cannot be accepted. To determine this, it is essential to know whether share of a land holder has been recorded as his exclusive possession or not. Whether shares of all co-sharers have been demarcated after partition or not ? Mr.Gurcharan Dass has further placed on record a letter addressed to the petitioner by the Land Acquisition Collector whereby amount of compensation was given to him in his individual capacity. Mr.Gurcharan Dass has relied upon jamabandi Annexure P2 and mutation register Annexure P2A to show that in revenue record petitioner is not recorded as co-sharer. Counsel has also referred to Annexure P18 attached with the replication to say that in the jamabandi for the year 1997-98, petitioner has been recorded as exclusive owner and not a co-sharer.

Mr.Raghujeet Singh Madan appearing for the respondent-HUDA has vehemently contested claim of the petitioner. He has relied upon a communication dated 12.3.1993 issued by the Chief Administrator, HUDA, Manimajra, Chandigarh whereby policy dated 20.2.1992 was reviewed and it was held as under:-

- ii) Benefit under oustees policy shall be restricted to one plot according to the size of the holding irrespective of the number of co-sharers.”

He has also drawn support from a Division Bench judgment of this Court rendered in **Smt.Ramo Bai and others v. State of Haryana and others**,

2007(3) RCR (Civil) 711 to contend that a policy can be modified by HUDA, has been recognised by this Court. This Court had acknowledged that all co-sharers are entitled to one plot. Mr.Madan has further referred to Punjab Land Revenue Act, 1887. Section 3(3) of the Act define “holding” and it has been said therein that “holding” means a share or portion of an estate held by one land owner or jointly by two or more land owners. He has further referred to a Full Bench of this Court in **Ram Chander v. Bhim Singh & others**, 2008(3) RCR (Civil) 685 to contend that even though petitioner may have a specific killa number, he will remain a co-sharer in respect of the entire Khewat. The Full Bench after taking into consideration the arguments raised, had formulated the following question:-

“4. The learned trial Court held that as the respondent/plaintiff had purchased land from a joint khewat, he had become a co-sharer in the entire khewat, and the fact that his sale deed evidenced purchase of specific killa numbers from Rectangle Nos.30 and 31 would not disentitle him to preempt the sale, made in favour of the defendant from Rectangle No.32. The trial Court placed reliance, for its conclusions, upon the Full Bench judgment in **Bhartu v. Ram Sarup's** case (supra).

XX XX XX XX XX

 XX XX XX XX XX

9. The question, therefore, that we are called upon to answer is whether purchase of land out of a joint khewat, by reference to specific killa numbers, out of specific rectangles, entitles a vendee to assert his right as a co-sharer in the entire joint

holding/khewat, comprised of other rectangles and khasra numbers. Put briefly, whether sale of land out of a joint holding, by reference to specific khasra numbers, confers the status of a co-sharer upon the vendee in the entire khewat.

To answer the above question in paras 18 and 19 of the judgment, it was held by the Full Bench that sale of land from a specific khasra/killla number, forming part of a specific rectangle number, but being a part of a joint khewat, would, in view of the nature of the rights conferred upon a co-sharer, be deemed to be the sale of a share from the joint khewat and such a vendee would be deemed to be a co-owner/co-sharer in the entire joint khewat. The Full Bench also took into consideration another attribute of joint property and held as under:-

“19. Another attribute of joint property is that where a co-owner in possession of a specific portion of the joint holding and recorded as such in the revenue record, transfers any right, title or interest, from the portion in his specific possession, his vendee would be entitled to protect the portion so transferred, without, however, asserting exclusive ownership to the portion so transferred and possessed, till such time as the joint estate is not partitioned.”

The Larger Bench had re-affirmed the earlier view of the Full Bench of this Court in **Bhartu v. Ram Sarup**, 1981 PLJ 204.

Taking this settled legal position in view, since the land was not partitioned and there was common khewat, petitioner even though had two specific khasra numbers, is held to be co-sharer. Therefore, my answer to question (A) is in negative.

After 1990 and 1993 policies to allot plots to oustees, a new policy had been introduced by the State of Haryana which was notified on 7.12.2007. Clause 2(i) of the policy read as under:-

“2(i) The allotment will be made to each co-sharer depending upon his share in the land acquired for Haryana Urban Development Authority and Haryana State Industrial Infrastructure Development Corporation Limited as per scale mentioned in the entitlement.”

Clause 2(xi)(a) of the policy gave entitlement to every co-sharer whose land has been acquired and the portion of Clause 2(xi)(a) from the policy can be culled as under:-

“2(xi) The plot sizes proposed for allotment are given as under:-

a) In case where only land is acquired:-

<i>Land Area Acquired (Each Allotment)</i>	<i>Size of residential plot to be allotted.</i>
100 to 500 sq. yd.	3 Marlas
501 to 1000 sq. yd.	4 Marla
1001 sq. yd to ½ acre	6 Marla
Above ½ acre to ¾ acre	8 Marla
Above ¾ acre to 1 acre	10 Marla
One acre and above	14 Marla

Since Department itself has come with a new policy on 7.12.2007 and the policy state that co-sharer is entitled to plot in his individual right, despite valiant effort made, Mr.Madan is out of breath to negate the relief claimed by the petitioner. Hence, answer of this Court to question No.(B) is in affirmative. As the answer to second question is in affirmative, the present writ petition is allowed and in accordance with the policy of 2007, the petitioner is held entitled to 10 Marlas plot. Therefore, necessary allotment

letter will be issued to the petitioner forthwith.

October 27, 2009.

(KANWALJIT SINGH AHLUWALIA)
JUDGE

RC