

(2014) 07 P&H CK 0560
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 15934 of 2010 (O&M)

Ashwani Kumar Munjal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 177 PLR 202 : (2014) 4 RCR(Civil) 303

Hon'ble Judges : Paramjit Singh Patwalia, J

Bench : Single Bench

Advocate : Sangita Dhanda, Advocate for the Appellant; Harsimrat Rai, DAG,
Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Paramjit Singh Patwalia, J.

CM No. 7533 of 2014

1. Allowed, as prayed for. Rejoinder filed on behalf of the petitioner is taken on record.

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2. Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 23.11.2009 (Annexure P-6) passed by respondent no. 2-Claim Commissioner under the Punjab Package Deal Properties (Disposal) Act, 1976 (in short "1976 Act") whereby application moved by the petitioner for allotment of alternative land in lieu of land left in West Pakistan by Ladha Ram, predecessor-in-interest of the petitioner, has been dismissed.

3. Brief facts for disposal of the present petition are to the effect that late Sh. Ladha Ram, predecessor-in-interest of the petitioner was a displaced person, who had migrated from Pakistan at the time of partition of the country. Sh. Ladha Ram, during his life-time, submitted a claim before the Claim Officer and

the Additional Settlement Commissioner sanctioned the claim with regard to six properties to the tune of Rs. 48,055/-. Thereafter, the petitioner's mother made a representation for the allotment of alternative site and a letter dated 18.05.1964 (Annexure P-2) was issued by the Chief Settlement Commissioner, Government of India, Rehabilitation to the petitioner's mother with regard to decision taken on her application dated 05.05.1964. Thereafter, the petitioner continued to send notices and making representations, but no action was taken. The claim of petitioner is that he is grand-son of late Sh. Ladha Ram and he is asserting a right in the property.

4. I have heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner has made reference to the amended provisions of the Punjab Package Deal Properties (Disposal) Amendment Act, 2009. The claim of petitioner is that his rights have already been determined but only the property is to be allotted or possession is to be delivered as per his lawful rights. Otherwise also, his claim has been rejected only on the ground of delay. Learned counsel further contends that case of the petitioner may be considered on merit, without taking into account the technical ground of limitation.

6. Per contra, learned State counsel vehemently contends that there is a delay of more than 52 years on the part of the petitioner for pursuing his claim. Learned State counsel relies upon Union of India (UOI) and Others Vs. Har Dayal, and contends that belated claim of the petitioner cannot be considered.

7. I have considered the rival contentions of learned counsel for the parties.

8. The "1976 Act" stands repealed. Thereafter, Punjab Package Deal Properties (Disposal) Amendment Act, 2009 came into force. Its following sections are relevant for decision of this petition:

4-A. The package deal property may also be transferred to a displaced person in accordance with the provisions of sections 4-B, 4-C, 4-D and 4-E of the Act.

4-B. (1) A displaced person in whose favour, an order regarding entitlement to property in lieu of property, left in Pakistan, was passed by any authority, appointed under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 since repealed (hereinafter referred to as the repealed Act of 1954) up to the 5th day of September, 2005, but the property was not allotted or the possession of the allotted property was not given to him, or in whose case, proceedings were pending before any authority for allotment or possession up to the said day, may apply, within a period of ninety days from the date of commencement of the Punjab Package Deal Properties (Disposal) Amendment Act, 2009, to the following authorities namely:-

(a) the Financial Commissioner, Revenue, if the order was passed by the State Government under the repealed Act of 1954; and

(b) the Claims Commissioner, if the order was passed by an authority, other than the State Government.

9. Section 4-B of the Punjab Package Deal Properties (Disposal) Amendment Act, 2009 which has come into force on 01.04.2009 provides that if proceedings were pending before any authority for allotment or possession up to the said day, concerned person may apply within a period of ninety days from the date of commencement of the Punjab Package Deal Properties (Disposal) Amendment Act, 2009. The petitioner moved the appropriate application/representation for revival of his claim which was pending at the relevant time.

10. Be that as it may, the fact remains that the Claims Commissioner while passing the impugned order has not taken into consideration the amended provisions of the Punjab Package Deal Properties (Disposal) Amendment Act, 2009. In view of above, the impugned order (Annexure P-6) is set aside. The petitioner will be at liberty to file an appeal along with application for condonation of delay before the appropriate forum in accordance with law. If the same is filed by the petitioner within one month on receipt of certified copy of this order, appropriate order shall be passed in accordance with law. The concerned authority will take into consideration the attending circumstances while deciding the application for condonation of delay.

11. Disposed of.