

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 3118 of 2015 (O&M)

Date of Decision: 05.04.2016

Gorakh Nath

..Petitioner

versus

State of Punjab and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE ARUN PALLI.**

Present : Dr. Naresh Kaushal, Advocate, for the petitioner.
Mr. Gurvinder Singh, Addl. Advocate General, Punjab.
Mr. Balwinder Singh, Advocate, for respondent Nos.2 and 3.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner seeks a writ of mandamus directing the respondents to allot in his favour a plot admeasuring 100 sq. yards (4 Marlas) under the oustee category. In the year 1974, the petitioner's father's land admeasuring 7 marlas was acquired under the Land Acquisition Act, 1894. In the year 1984 also, the petitioner's father's land admeasuring 3 kanals 11 marlas was acquired. The policies relating to allotment under the oustee quota changed from time to time and even between the first and second acquisition of petitioner's father's property.

2. Upon the acquisition in the year 1974, the petitioner's father made an application for allotment under the oustee quota. At that time the policy dated 17.04.1984 was in force. Clauses 6 and 8 of the policy in so far as they are relevant read as under:-

"Eligibility:-

6. It has been decided to reserve the smaller sizes plots exclusively for the persons belonging to the lower income groups. The allotment of plots shall, therefore, be made on the basis of the following income criteria:-

- i) Plots upto 100 sq. yds. to be allotted to persons having a gross monthly income of Rs.350/-.
- ii) Plots upto 125 sq. yds. will be allotted to persons having a gross monthly income of Rs.550/-.
- iii) Plots upto 150 sq. yds. will be allotted to persons having a gross monthly income of Rs.750/-.
- iv) Plots upto 200 sq. yds. to be allotted to persons with a gross income of Rs.1,000/-.

Reservation Policy:-

8. It has been decided to revise the existing policy of reservation as follows:-

- (i) Before any plots are allotted, all oustees whose land has been acquired for the setting up of an Estate shall be accommodated within the frame work of the income criteria (prescribed) mentioned above.....”.

3. The policy dated 17.04.1974 relating to future development of Urban Estates in Punjab was amended on 26.05.1983 by introducing the policy regarding disposal of residential plots in the Urban Estates, Punjab 1983. The relevant provisions thereof are as follow:-

“ACCOMMODATION OF OUSTEES:-

The policy regarding the allotment of plots to oustees will be as under:-

- i) xx xx xx xx
- ii) xx xx xx xx
- iii) An oustee would only be allotted plot on the following basis:-

<u>LAND ACQUIRED</u>	<u>SIZE OF PLOT</u>
(a) ½ acre to 3 acres	100 sq. yds.
(b) Between 3 to 5 acres	200 sq. yds.
(c) Above five acres	500 sq. yds.

(unless he asks for a smaller plot).

EXPLANATION:

However, if on the land acquired there was a dwelling unit, 100 sq. yds. plot may be allotted even though the area acquired may be less than ½ acre.

- (iv) The price chargeable for allotment of plots to the oustees would be same as for general category.

- (v) All oustees of any Joint Khata would be entitled to one plot only."

4. As we mentioned earlier, in the year 1984, 3 kanals 11 marlas of the petitioner's father's property was acquired. We will assume that the petitioner's father's entire land was acquired by virtue of the acquisition of the years 1974 and 1984 admeasuring 7 marlas and 3 kanals 11 marlas, respectively.

5. Petitioner's father died on 16.11.1985.

6. On 06.09.1991, the petitioner applied for the allotment of a plot under the oustees quota. The Estate Officer by his letter dated 01.01.1992 informed the petitioner that as the property acquired (admeasuring an aggregate of 3 kanals and 18 marlas) was less than half an acre. The petitioner was, not eligible to be allotted a plot in the oustee quota under the policy as amended on 26.05.1983.

7. A further amendment was introduced to the policy on 08.11.1993. The Punjab Housing Development Board, Chandigarh by a communication dated 08.11.1993 informed the Estate Officer, Urban Estate, Punjab, inter-alia, as follows:-

"4. Where the land of the oustee was acquired at different points of time, he should be given the benefit of all the previous acquisition while considering him for the allotment of a plot in accordance with the 1983 policy."

8. In the year 2001, the petitioner's land admeasuring 3 and 3/10 marlas was acquired. The petitioner contends that in view of Clause-4 of the communication dated 08.11.1993 he is entitled to club his father's lands which were acquired in the years 1974 and 1984 and his land which was acquired in

the year 2001 for determining whether half an acre of land belonging to him had been acquired.

9. The submission is not well founded. Clause-4 of the policy dated 08.11.1993 applies “where the land of the oustee was acquired at different points of time.....”. Thus the acquired land must be of the oustee. In other words, only those lands which a person owned at the time of acquisition can be taken into consideration. The ownership could indeed be acquired in any manner including by purchase or by inheritance.

In the case before us, the petitioner did not own at any time the land that belonged to his father and was acquired as aforesaid. The land was acquired prior to the petitioner’s father’s death on 16.11.1985. Upon acquisition the land vested in the Government. The petitioner could, therefore, never have acquired the land. In other words, the petitioner’s father’s land that had been acquired cannot be said to be the “land of the oustee” i.e. the petitioner. The petitioner claims under the oustee quota as an oustee. However, his father’s land never having vested in him, the petitioner cannot be said to be an oustee in respect of such land. His father’s land, therefore, cannot be said to be the petitioner’s land. The petitioner, therefore, cannot be given the benefit of the land previously held by his father.

10. The petitioner then relied upon a certificate dated 30.11.1992 to contend that his father also owned another plot measuring 1kanal 7 marlas. He contended that together with the other lands admeasuring 7 marlas and 3 kanal and 11 marlas, the petitioner’s father’s land would exceed half an acre and he, therefore, would be entitled as his father’s heir to be the benefit of allotment under the oustee quota that the father would have been entitled to.

The submission is not well founded for the certificate states that the land was in the name of the petitioner and not in the name of the father. In

the circumstances, the petitioner and his father owned less than half an acre of land at the relevant time.

12. The judgment of a Division Bench of this Court dated 15.01.2015 in the case of Deepak v. State of Punjab and others, Civil Writ Petition No. 16267 of 2014 does not assist the petitioner's case as it is clearly distinguishable. In that case, the land belonged to the petitioner himself at all material times. The Division Bench found that the authorities had purposely and in order to disentitle the petitioner therein for a minimum size of plot admeasuring 100 sq. yards left out land measuring only 1 marla from acquisition. It was acquired thereafter. The petitioner was, therefore, entitled to clubbing. The major part of the land was acquired on 17.05.2001 and the portion of one marla land left out earlier was acquired on 01.11.2011. The entire land of the petitioner was utilized for the same purpose, namely, setting up of certain sectors. It is in these circumstances that the Division Bench held that merely because one marla of land had been left out in the initial acquisition, the petitioner could not be deprived of his rights of allotment of plot as an oustee. In the case before us all the lands sought to be clubbed did not belong to the petitioner.

The case is, therefore, clearly distinguishable from the case before us.

11. In this view of the matter, it is not necessary to consider the other contentions raised by the respondents.

12. The petition is, therefore, dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

05.04.2016

(ARUN PALLI)
JUDGE

'ravinder'

To be referred to the reporter	√Yes	No.
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