

(2005) 08 RAJ CK 0033

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 264 of 2005

Anand Food Products

APPELLANT

Vs

Rajasthan State Industrial Development and Investment
Corporation and Another

RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Rajasthan State Industrial Development and Investment Corporation Disposal of Land
Rules, 1979 — Rule 25, 5

Citation : (2005) 4 RLW 2961 : (2005) 4 WLC 719

Hon'ble Judges : Rajesh Balia, J;Raghvendra S. Chauhan, J

Bench : Division Bench

Advocate : B.D. Purohit, for the Appellant;

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—Heard the learned counsel for the appellant.

2. This appeal is directed against the judgment of the learned Single Judge dated 14.2.2005 dismissing the writ petition filed by the petitioner-appellant.

3. The petitioner-appellant by filing writ petition No. 3106/2002 has sought mandamus of the following nature :-

(i) That the order dated 8.7.2002 (Annex.38) may kindly be declared and the same may kindly be quashed and set aside.

(ii) The respondents may kindly be directed to allot an industrial plot to the petitioner-firm situated at New Industrial Area behind New Power House, Jodhpur.

4. This claim is founded on two fold allegations that the petitioner had applied for allotment of a land behind the New Power House Road in the New Industrial Area vide application dated 7.5.90 (Annex.2) and on that basis, he claims priority in the matter of allotment of industrial plot in the industrial area. Admittedly, there is no claim to any specified plot of land to be provided for the purpose of

allotment so far. Thereafter, the petitioner has been pursuing his application for allotment of land at reserved price and which has been consistently not favourably responded to by the RIICO. The first application for the purpose by the petitioner states that he needs an industrial plot measuring 1,000 sq. meters for which he has annexed a Banker's cheque of Rs. 500/-, the fee for registration and another Banker Cheque of Rs. 75,000/- against the Development charges of the industrial plot.

5. This application was responded to by letter dated 23.5.90 (Annex.3) clearly stating that in the New Industrial Area, Jodhpur no industrial plot whether of 1000 sq.Meters or of any other size is available and both the cheques were returned.

6. Subsequently thereto, by letter dated 21.9.90 (Annex.4), again application was made stating that while the application has been rejected stating that no plot is available of any size, but the applicant has come to know that on the stated site, the plot is available and therefore, again submitted Rs. 500/- for seeking allotment. As it appears, the said letter was responded to on 23rd October, 1990 (Annex.5) reiterating the earlier stand taken by the respondent-Corporation against the petitioner's earlier application stating that no plot is lying vacant for allotment and returned the two cheques.

7. The petitioner again submitted an application dated 24.6.91 (Annex.6) stating that he has learnt that the State Government has permitted for delineating certain plots in the area, and therefore, the request was made for allotment of 1,000 Sq.Meters.

8. Again, the RIICO vide letter dated 4.7.91 (Annex.7) in regard to its earlier response made it clear that the petitioner is unnecessarily repeating his application for allotment when no such plot is available in the area and again a cheque of Rs. 500/- was returned.

9. This was followed by another application dated 16.7.91 (Annex.8). Curiously enough, in this letter the applicant stated that while searching for land, they found that some land is lying vacant in New Power House Area and they have met the erstwhile Senior Regional Manager who guided them that in this respect, the sanction shall have to be obtained from the Head Office and with this assertion, he again referred his earlier submission of advance of Rs. 75,000/- which has long back returned to the petitioner and again it was sent back to the respondents in the expectation that principally they may have received the sanction from the Head Office. Vide letter dated 22.7.91 (Annex.9), the petitioner made another application that he has learnt that proposal for setting out industrial plot has been sent to the Head Office and he made suggestions that 4000 sq. Meters is lying vacant behind the New Power House Road which can be divided into 4 industrial plots of 1,000 Sq.Meter each by which the small industrial units can be benefited. With this suggestion, he requested that plots may be sanctioned and that while sanctioning the plot, his application may be

considered on priority basis.

10. Two days thereafter vide communication dated 24.7.91 (Annex.10), he sought his priority No. amongst the applicants for the plots by stating that he has been informed on telephone that the security deposit has been doubled, therefore, Rs. 500/- as additional amount of cheque was also to be sent along with the application.

11. This letter was responded vide letter dated 1.8.91 (Annex. 11) clearly stating that it is not possible to consider the application at the present time as no industrial plot is available behind the New Power House area and whenever the plot will be available, the application may be considered. It appears that the Regional Manager also stated that his name has been included at Serial No. 6 in the priority.

12. The petitioner then claimed vide letters dated 8.8.91 (Annex. 12) and 18.11.91 (Annex.13 and Annex.14), 21.12.91 (Annex. 15), 21.4.92 (Annex. 17), 2.6.92 (Annex. 18), 10.6.92 (Annex.20) and 11.6.92 (Annex.21) that on the basis of his application dated 7.5.90, his priority should be No. 1 and not at No. 6 and he may be allotted plot in that priority.

13. It appears that ultimately, the priority No. of the petitioner was entered at Serial No. 1 amongst the waiting list as appear from the communication dated 11.6.92 (Annex.22). However, it was made clear that for the present, his application for allotment cannot be considered as no plot is available in the area.

14. This stand was again reiterated vide letter dated 16.6.92 (Annex.23) in which it was stated that though his name is entered at Serial No. 1 amongst the applicants but since no plot is available, he may get the refund of his amount.

15. Vide letter dated 19.6.92 (Annex.24), the petitioner, referred to some verbal communication between himself and the Regional Manager that the Head Office had sanctioned 4000 sq. meters and for which the Regional Manager has submitted its-request for its sub-division into 4 plots of 1000 sq. meters, and therefore, the petitioner states that he is still willing to obtain either the 4000 sq. meters in totality or if it is subdivided into one plot of 1000 sq. meters each, one such sub- divided plot may be sanctioned in his name and he submitted an amount of Rs. 3000/- by way of security deposit and advance cheque dated 19.6.92 of Rs. 90,000/- being 4 amount of plot vide letter dated 19.6.92 (Annex.24).

16. The petitioner was communicated the order of refunding the amount of security by letter dated 18.6.92 (Annex.26). The petitioner was informed that his application is pending consideration before the Head Office and further progress will only take place after receiving decision of the Head Office. Thereafter, by letter dated 8th July, 1992 (Annex.30) the amount of security deposit and the additional deposit was returned to the petitioner by stating that further amount so determined shall be deposited in accordance with the decision taken by the

Head Office.

17. The petitioner again wrote a letter dated 12.8.92 (Part of Annex.31 collectively) to Managing Director of the RIICO communicating that he was informed on 10th August, 1992 by the Executive Director that plot is not available for allotment and it has to be sold by auction and not by allotment, however, the petitioner insisted on allotting the land to him at reserved price.

18. Having failed to get any allotment, he preferred S.B. Civil Writ Petition No. 439/93. In the first instance, the learned Single Judge of this court vide order dated 19.4.2002 disposed off the three writ petitions filed by the three different applicants for the plot directing the petitioner-firm to make a representation to the respondent -RIICO within a period of four weeks from the date of the judgment. The respondents were directed to decide the representation by speaking order, after giving an opportunity of hearing to the petitioner. It was left open to the petitioner to approach this court again if he is not satisfied with the decision of the respondents.

19. In pursuance of these directions, the representation made by the petitioner was considered by the impugned order dated 8.7.2002 clearly stating that under Rule 5 of the RIICO Disposal of Land Rules, 1979 also the Corporation has right to reserve certain plots in the industrial area which it may dispose of by public auction for which the terms and conditions governing auction shall apply. As such the claim of the party of allotment of plots does not succeed. This has led to filing of the writ petition which was dismissed by the learned Single Judge finding that stand taken by the respondents appears to be just and in accordance with the Rules framed for the disposal of the land.

20. The learned counsel for the petitioner/appellant has vehemently urged that in getting an industrial plot in the area in question since 7th May, 1990 he was the first applicant; he has made application for allotment of plot time and again and also asked the priority No. 1 in the case of availability of plot, and therefore, it gave him a legitimate expectation that as and when the plot is available, it would be allotted to him at reserved price in future which arises out of their own action and in breach of the same, if the plot is sold at auction, it is arbitrary and unreasonable on the part of the respondents which is a State within the meaning of Article 12. The petitioner has been wrongly deprived of his right of allotment of land at reserved price. He also invited attention of the court to clause 25(3) of the Rajasthan State Industrial Development & Investment Corporation Disposal of Land Rules, 1979 for contending that when he made an application for allotment of land even if the plot of the requisite size was not available and plot of any other size was available, the Corporation was bound to make an alternative plot available. It was only thereafter if the applicant has refused to accept that counter offer, his application for allotment would have come to an end, otherwise, he was entitled to allotment as per his option.

21. Having considered the contention of the appellant in the light of the aforesaid

facts, we are of the opinion that no case for seeking such a mandamus in this case has been made out.

22. Firstly, it need no elaboration that petitioner does not have vested right to claim allotment of an industrial plot on any particular site merely on submission of application for such allotment. The Rules clearly leans in favour of the Corporation that it can reserve some plots for entertaining individual applications for allotment or to dispose of any plot at public auction.

23. From the correspondence which we have noticed from the very first application of the appellant it is borne out that on that date, no plot of requisite size was available with the respondent Corporation and it was so continued until 1992 and that was successfully declined by the respondents. Obviously, in these circumstances, no case of legitimate expectation could be said to have arisen in favour of the applicant for allotment of land at reserved price. It was for the first time in 1992 when Head Office sanctioned for creation of 4000 sq. meters of industrial plots that the petitioner came out with an alternative that the plot may be divided into four smaller plots out of which one plot can be allotted to him of the requisite size or in the alternative he was desirous of purchasing the four plots. However, it was not the case of the applicant nor it has, at any time, come on record that the plot for allotment in 1992 was ever made on application of any individual. We have also noticed that the Executive Director of the RIICO has informed in August, 1992 to the petitioner that the said plot was stated to be allotted through auction, therefore, no land in terms of Rule 5 or in any sense of the terms could be allotted to the applicant full or in any part of 4000 sq. meters which was sanctioned in 1992 as industrial plot much after he made an application on 7.5.90 for the said land being available for allotment at individual application. In fact, in 1992 petitioner was made aware that the plot was meant for allotment by auction. He has made a counter - suggestion to the Managing Director contending that the decision may be reconsidered. However, there is nothing to suggest on record under whose decision made in 1992 for placing the plot in question for allotment through public auction was ever reviewed. The impugned order clearly gives out this picture that when the petitioner had made an application, no plot was available for allotment in response to the application and when ultimately plot was sanctioned behind New Industrial Area, it was reserved for allotting through auction. This fact is fully corroborated by the petitioner's own letter dated 12.8.92 (Part of Annex.31 collectively) in which the petitioner clearly communicated that it was informed on 10.7.92 by Executive Director of the RIICO that this plot is not available for allotment but had to be auctioned, if it at all to be allotted. Therefore, if it at all to be allotted. Therefore, the contention of the learned counsel for the appellant that after the writ petition was disposed of directing the respondents to consider and decide the representation by speaking order, the respondents have alerted their stand in respect of the allotment of land in question which was hitherto before reserved for allotment through individual applications and it was only for the purpose of rejecting his application that the plot has been slated for public auction, in our

opinion, is contrary to the petitioner's own admission dated 12.8.92 that at least on 10.8.92, the petitioner was informed that the plot in question in respect of which mandamus is sought is to be sold by public auction and not by individual application.

24. Be that as it may, it is apparent that the petitioner was not assured by any authority of the Corporation to be allotted land of specified size or specific plot in respect of his application dated 7.5.90 or later applications which were rejected number of times and again before informing the petitioner that his application may be considered in future as and when the plot is available for allotment. However, no such assurance could have been given in respect of future dealing of the plot by any officer of the Corporation in the absence of any specific scheme for allotment of land at the reserved price for a particular purpose, otherwise, the normal rule is that whenever the public property is to be allotted, it should fetch its best price and that can be achieved through public auction thereof so that transparency is made in disposal of public property and it cannot be insisted upon by any person that it may be made available at subsidized and lower price than it can fetch in the open market unless nay such specific scheme is sanctioned by the competent authority keeping in view public interest it is perceived to serve. Since there is no vested right in the petitioner to secure allotment on individual application, no mandamus can be issued for directing the respondents to allot any plot in response to his application dated 7.5.90 at reserved price.

25. The reference to Clause 25 of the Allotment Rules is also of little relevance. Rule 25 deals with time when refund of security amount becomes due. Clause (3) only says that where allotment of any type has not been made and the party does not accept the alternative size of land within one month from the date of receipt of allotment letter.

26. Apparently, this clause can only be invoked where the Corporation offers an alternative size of the land in response to application for particular size but it does not mandate that in every case if the size of the plot is not available, the Corporation is to allot an alternative plot, therefore, no benefit can be derived from sub-clause (3) of clause 25.

27. As a result, we do not find any merit in the appeal and the appeal is hereby dismissed.